

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/1. THE DIVISIONS OF TIME/(1) THE YEAR/(i) The Calendar Year/301. The calendar.

## **TIME (VOLUME 97 (2010) 5TH EDITION)**

### **1. THE DIVISIONS OF TIME**

#### **(1) THE YEAR**

##### **(i) The Calendar Year**

###### **301. The calendar.**

The almanac is part of the common law<sup>1</sup> and was recognised by statute in 1662<sup>2</sup>. The first full year under the English calendar as it exists today was 1753<sup>3</sup>.

<sup>1</sup> *R v Dyer* (1703) 6 Mod Rep 41; *Brough v Parkings* (1703) 2 Ld Raym 992; *Tutton v Darke*, *Nixon v Freeman* (1860) 5 H & N 647. Judicial notice is taken of the day on which a feast mentioned in the calendar falls: *R v Dyer* (1703) 6 Mod Rep 41; *Brough v Parkings* (1703) 2 Ld Raym 992.

<sup>2</sup> See the Act of Uniformity 1662 (repealed), which gave statutory recognition to the Book of Common Prayer (see **ECCLESIASTICAL LAW**) to which the calendar was attached.

<sup>3</sup> See the Calendar (New Style) Act 1750 and the Calendar Act 1751. The Calendar (New Style) Act 1750 was repealed by 22 Vict c 2 (1859) s 1, Schedule (repealed), in so far as it required the keeping and observance of certain days.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/1. THE DIVISIONS OF TIME/(1) THE YEAR/(i) The Calendar Year/302. Length and divisions of the year.

###### **302. Length and divisions of the year.**

The calendar year begins on 1 January<sup>1</sup> and the common year consists of 365 days. The year is divided into 12 unequal parts, called 'calendar months'. In common years the month of February contains 28 days; in a leap year that month contains 29 days, and thus the total number of days in that year is increased to 366. Leap years occur once in every four years, the years so designated being those of which the number when divided by four is an integer, subject, however, to this exception, that the centennial year is a leap year only when it is a multiple of 400<sup>2</sup>.

In any period of a year in which the month of February has 29 days there must be 366 days; and any child born on 29 February or on any previous day in a year in which February has 29 days must live 366 days to complete his anniversary<sup>3</sup>. The ecclesiastical year still begins on 25 March<sup>4</sup>, but all feast days, whether movable or fixed, are dated according to the new style<sup>5</sup>. The legal year was formerly divided into four terms<sup>6</sup>.

<sup>1</sup> See the Calendar (New Style) Act 1750 and the Calendar Act 1751, by which three changes were introduced. From the beginning of the year 1752 the year was made to begin on 1 January instead of 25 March;

the system of intercalation was altered by the introduction of the exception mentioned in the text to note 2; and eleven days were suppressed, the day which would have been 3 September 1752 being made 14 September.

2 Calendar (New Style) Act 1750 s 2. The necessity for the changes in the calendar introduced by the Calendar (New Style) Act 1750 and the Calendar Act 1751 (see PARA 301 note 3) arose in the following way. Before 1582 the year was regulated throughout Christendom by the Julian Calendar. The problem being to adjust the civil year, consisting of so many complete days, to the solar year, consisting of the same number of days and something less than six hours in addition, and to preserve the same interval between the beginning of the year and the equinox, the system of intercalating a day in which the extra hours should be absorbed was devised. In every fourth year according to the Julian Calendar a day was interposed between the twenty-fourth and twenty-fifth days of February. The sixth day before the calends of March was made to consist of two days: '*id biduum pro uno die habetur*'. This system of intercalation was in course of time discovered to be erroneous. It had the effect of making the year unduly long, so that, whereas in the year when the calendar was introduced the spring equinox fell on 25 March, and in the year 325, the date of the Council of Nicaea, on 21 March, by the year 1582 it had come to fall on 11 March. To restore the equinox to the position in the year which it occupied in the year 325, to rectify the error and to provide against its recurrence in the future, it was ordained by Pope Gregory XIII that ten days should be suppressed, and that the number of intercalations in every 400 years should be reduced by three. The Gregorian Calendar was adopted in every country in Christendom, including Scotland, but excepting England and the countries in which the Orthodox or Greek Church was recognised. The consequence was that during the seventeenth century and the first half of the eighteenth there was an entire want of harmony between the system prevailing in England and that prevailing in the greater part of Europe. From the date when the Gregorian Calendar was introduced there was a difference of ten days between an English and a continental almanac, and that difference was increased to eleven days when the eighteenth century began. The Calendar (New Style) Act 1750, having for its object the assimilation of the English calendar to the calendar recognised in other parts of Europe, necessarily followed the lines of the Gregorian reform. The English calendar is now the Gregorian Calendar.

3 See the Calendar (New Style) Act 1750. See also *R v Worminghall Inhabitants* (1817) 6 M & S 350, where service beginning on 13 October in the year before leap year and ending on 11 October of the next succeeding year was held not to be a service for one year, although it had lasted for 365 days. According to the Roman theory regarding the intercalated day (see note 2), the anniversary of the birthday of a child born in a leap year on 24 or 25 February would in a common year fall on 24 February, and so St Matthias' Day is, in the Church of Rome, still kept in a leap year on 25 February, not as in common years on 24 February. The calendar in this respect was altered on the revision of the Prayer Book in 1662. The Statute De Anno et Die Bissextili (40 Hen 3 (1256)), in which the Roman theory of intercalation was adopted, was repealed by the Civil Procedure Acts Repeal Act 1879 (repealed). The Calendar (New Style) Act 1750 was amended to exclude the Table of Lessons by the Statute Law (Repeals) Act 1971 s 1, Schedule Pt II.

4 See *R v Swyer* (1830) 10 B & C 486.

5 Calendar (New Style) Act 1750 s 3. Cf the Calendar Act 1751 s 2. However, in the calendar year next but one after the commencement of the Easter Act 1928, and in all subsequent years, the dates of Easter and of the movable feasts dependent on those dates will be governed by that Act, and the Calendar (New Style) Act 1750 s 3, and the Calendar Act 1751 s 2, will be amended accordingly: see the Easter Act 1928 s 1. Easter Day is to be the first Sunday after the second Saturday in April: see s 1. The Easter Act 1928 is to commence on a day to be fixed by Order in Council (s 2(2)) and may be extended to certain parts of the British dominions (see s 2(3), Schedule; South Africa Act 1962 s 2(3), Sch 5; Zimbabwe Act 1979 s 6(3), Sch 3). No Order in Council under this power had been made at the date at which this title states the law although a private member's Bill was unsuccessfully presented in 1999, attempting to bring the Easter Act 1928 into force: see the Easter Act 1928 (Commencement) Bill 1999, HL Bill 24. The day for the swearing and admission of the Lord Mayor of London in the Guildhall changed from 8 November to the Friday preceding the second Saturday in November: see the Michaelmas Term Act 1750 s 11 (repealed); Calendar Act 1751 s 4; Supreme Court of Judicature (Consolidation) Act 1925 ss 223, 226, Sch 6 (repealed); City of London (Various Powers) Act 1959 ss 5(2), 20 (repealed); and cf **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 44.

6 For the terms and sittings of the courts see **CIVIL PROCEDURE** vol 11 (2009) PARA 64. As to the dining terms of Bar students see **LEGAL PROFESSIONS** vol 66 (2009) PARA 1076.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/1. THE DIVISIONS OF TIME/(1) THE YEAR/(ii) Other Usages of the Term 'Year'/303. Statutory definitions of 'year'.

## (ii) Other Usages of the Term 'Year'

### 303. Statutory definitions of 'year'.

The term 'year', besides denoting the solar year of the calendar, may also mean any like period of time running from a date arbitrarily fixed by statute, contract<sup>1</sup> or otherwise.

'Financial year', when used in any Act of Parliament passed after 1889, with reference to the Consolidated Fund or the National Loans Fund<sup>2</sup>, or money provided by Parliament, or to the Exchequer, or to taxes or finance, means, unless the contrary intention appears, the 12 calendar months ending on 31 March<sup>3</sup>. It is with reference to the year so computed that the public accounts are made up, the budget is prepared and the supplies are voted<sup>4</sup>.

The accounts of local and other authorities which are subject to audit must be made up yearly to 31 March or to such other date as the Secretary of State<sup>5</sup> may direct<sup>6</sup>.

For the purposes of assessment to income tax in England the year is defined as running from 6 April to the following 5 April<sup>7</sup>.

For social security purposes 'benefit year' is accorded a special meaning<sup>8</sup>.

1 The meaning of 'year' in a covenant providing for payments on 1 May in each year for eight years from 5 May was considered in *IRC v Hobhouse* [1956] 3 All ER 594, [1956] 1 WLR 1393. As to the exclusion of the ordinary meaning of a word when used in a written instrument see **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARA 164 et seq. As to the meaning of 'year' in contracts see PARA 304.

2 As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031; and as to the National Loans Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 727 et seq; **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1334.

3 See the Interpretation Act 1978 ss 5, 22(1), Sch 1, Sch 2 para 4(1)(a) (s 22(1) amended by the Legislative and Regulatory Reform Act 2006 s 25(2); Interpretation Act 1978 Sch 2 para 4(1)(a) amended by the Family Law Reform Act 1987 s 33, Sch 2 para 74, Sch 3 para 1, Sch 4); **PARLIAMENT** vol 78 (2010) PARAS 1035; and **STATUTES** vol 44(1) (Reissue) PARA 1385. As to the issue of Treasury bills in any financial year see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 730; **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARAS 1389-1390. The definition of 'financial year' was extended to the financial year when used with reference to the National Loans Fund by the National Loans Act 1968 s 1(6) (repealed): see now the Interpretation Act 1978 Sch 1. 'Financial year' is similarly defined (ie as the 12 months ending with 31 March) in the Coal Industry Act 1994 s 65 for the purposes of the Coal Authority (see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 57). For the method of determining the financial year of a company see the Companies Act 2006 ss 390-392; and **COMPANIES** vol 15 (2009) PARAS 711-713.

4 The date fixed by the National Loans Act 1968 s 21(1) (amended by the Finance Act 2003 s 212(1), (2)) as the date up to which the annual finance accounts should be made is 31 March. The history of the financial year before that time is as follows. From the earliest recorded times the yearly accounts of public receipt and expenditure were made up to Michaelmas. The financial year ended on 29 September until 1752, when, in consequence of the change of style, 10 October was substituted, the other quarter days being 5 January, 5 April and 5 July. Just before the end of the eighteenth century a change was introduced with a view to establishing a uniform system with regard to the several branches of revenue and expenditure. It was then arranged that the year should end with 5 January, and the first annual accounts on that system were for the year which ended on 5 January 1804. That was the date fixed by 42 Geo 3 c 70 (Public Accounts) (1801-2) s 4 (repealed). In 1832 another change was made, for, whereas previously the budget had been made up for the year ending 5 January, Lord Althorp presented his budget for the year ending 5 April 1833, and at the same time supplies were taken up to 31 March 1833. There were thus three different terminations to the financial year, 5 April, 31 March and 5 January, which, being fixed by statute for the purpose of the financial accounts, could not be altered without legislation. The Public Revenue and Consolidated Fund Charges Act 1854 was accordingly enacted to fix the date at 31 March: see Parliamentary Papers on Public Income and Expenditure, printed by order of the House of Commons, 29 July 1869, Pt II, App 13 at 326 et seq. The Public Revenue and Consolidated Fund Charges Act 1854 s 2 is now replaced by the National Loans Act 1968 s 21. As to the date of commencement of the year for the purposes of assessment to income tax see the text to note 7. As to the granting of supply see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 713.

5 In law 'Secretary of State' means one of Her Majesty's Principal Secretaries of State: see the Interpretation Act 1978 s 5, Sch 1. Accordingly, many modern statutes refer simply to the 'Secretary of State' without reference to a particular department or ministry. As to the office of Secretary of State see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 355.

6 See the Audit Commission Act 1998 s 2, Sch 2 paras 1, 2; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 757 et seq. The authorities to which this applies are local authorities (ie county, district, London borough and parish councils but not local government bodies in Wales); joint authorities; the Common Council of the City of London so far as concerns its collection fund, City fund and superannuation fund; the Greater London Authority, a functional body, the London Pensions Fund Authority and the London Waste and Recycling Board (see **LONDON GOVERNMENT**); the Council of the Isles of Scilly; parish meetings of parishes without parish councils; committees of local authorities (including joint committees of two or more local authorities); charter trustees constituted under the Local Government Act 1972 s 246 (see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 662); port health authorities; the Broads Authority; national park authorities; conservation boards established by order under the Countryside and Rights of Way Act 2000 s 86 (see **OPEN SPACES AND ANCIENT MONUMENTS**); police authorities established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139); fire and rescue authorities constituted by schemes under the Fire and Rescue Services Act 2004 s 2 or schemes to which s 4 of that Act apply; joint waste authorities established for an area in England by an order under the Local Government and Public Involvement in Health Act 2007 s 207 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 51); licensing planning committees; internal drainage boards; local probation boards established under the Criminal Justice and Court Services Act 2000 s 4 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1834); probation trusts (other than Welsh probation trusts as defined in the Offender Management Act 2007 Sch 1 para 13(6)); passenger transport executives (see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 63 et seq; **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 247); and economic prosperity boards and combined authorities established under the Local Democracy, Economic Development and Construction Act 2009 s 88 and s 103 respectively (see **TRADE AND INDUSTRY** vol 97 (2010) PARA 997 et seq); see the Audit Commission Act 1998 s 2, Sch 2 paras 1(a)-(f), (h)-(q), 1B, 2, 4 (Sch 2 para 1 amended by the Greater London Authority Act 1999 s 133(1); the Countryside and Rights of Way Act 2000 s 86(2), Sch 13 para 8; the Criminal Justice and Court Services Act 2000 s 4(3), Sch 1 para 17(3)(b); the Criminal Justice and Police Act 2001 s 137, Sch 7 Pt 5(1); the Fire and Rescue Services Act 2004 s 53(1), Sch 1 para 88; the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13 Pt 2 para 52; the Offender Management Act 2007 s 5(6), Sch 1 para 13(4)(b); the Local Democracy, Economic Development and Construction Act 2009 s 119, Sch 6 para 89; and by SI 2008/2038; Audit Commission Act 1998 Sch 1 para 1B added by the Public Audit (Wales) Act 2004 s 66, Sch 2 paras 21, 38(1), (3)).

The Audit Commission Act 1998 s 2 also applies to annual accounts of health service bodies prepared under the National Health Service Act 2006 Sch 15 para 3(1) (see **HEALTH SERVICES** vol 54 (2008) PARA 518); Audit Commission Act 1998 Sch 1 para 1A (added by SI 2003/1324; substituted by the Health Act 2006 s 80(1), Sch 8 paras 39, 42(1), (3); and amended by virtue of the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 281, 297). It does not, however, apply to the accounts of a body specified in the National Health Service Act 1977 s 98(1)(za) or (bb)-(dd) (repealed) in its capacity as a trustee of a charitable trust: Audit Commission Act 1998 Sch 2 para 1C (added by SI 2005/1074; repealed except in relation to Welsh NHS bodies by the Health Act 2006 Sch 8 para 42(4), Sch 9). Likewise until a day to be appointed the Audit Commission Act 1998 s 2 does not apply to a Welsh NHS body: see Sch 2 para 1(g) (amended by the Public Audit (Wales) Act 2004 Sch 2 para 38(2); and partly repealed by the Health Act 2006 Sch 8 para 42(2), Sch 9). At the date at which this title states the law, no such day had been appointed.

7 See the Income Tax Act 2007 s 4(3), (5); and **INCOME TAXATION** vol 23(1) (Reissue) PARA 2.

8 See the Social Security Contributions and Benefits Act 1992 s 21(6); and **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 266. As to the meaning of 'year' in relation to a course of study see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 198.

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### 304. Meaning of 'year' in contracts.

By the terms of a contract any date may be fixed for the beginning of a year, and, in the absence of any express definition of the term, it may appear from the contract that a period beginning or not beginning on 1 January, as the case may be, was intended<sup>1</sup>. Similarly the words 'leap year' in a contract may mean calendar year or any period of 12 months not necessarily commencing on 1 January but including a leap day, according to the circumstances<sup>2</sup>.

1 The word 'year' in a covenant may well mean in one context the calendar year, even though in another context in the same instrument a period of years runs from another date: see eg *IRC v Hobhouse* [1956] 3 All ER 594, [1956] 1 WLR 1393. Contracts of hiring are frequently made from a quarter day to the corresponding day of the next year. A hiring from one Whit Sunday to the next, although Whit Sunday is a movable feast and so the period may be less than 365 days, is deemed to be a hiring for a year (*R v Newstead Inhabitants* (1770) Burr SC 669), but a hiring from Monday after Michaelmas, which fell on a Saturday, until next Michaelmas Day was held not to be a hiring for a year (*R v Standon Massey Inhabitants* (1809) 10 East 576).

2 *Director of Savings v Woolf* (1997) Times, 9 July (construction of prospectus for pensioner's guaranteed income bond).

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/1. THE DIVISIONS OF TIME/(1) THE YEAR/(ii) Other Usages of the Term 'Year'/305. Meaning of 'in any one year'.

### 305. Meaning of 'in any one year'.

The expressions 'in any one year' or 'in each year' may refer to the calendar year<sup>1</sup> or to any period of 12 calendar months, according to the context in which the expression is used<sup>2</sup>.

The term 'in any one year' may even be used to denote a season or part of a year<sup>3</sup>.

1 As to the calendar year see PARAS 301-302.

2 *Shankland v Airdrieonians Football and Athletic Society* 1956 SLT (Sh Ct) 69. See also *Cathcart v Hardy* (1814) 2 M & S 534, where the absence of a spiritual person from his benefice for more than a certain time in one year meant, for the purpose of 43 Geo 3 c 84 (Benefices) (1802-3) (repealed), absence for more than that time during the 12 calendar months preceding the suit; *Bartlett v Kirwood* (1853) 2 E & B 771 (Pluralities Act 1838 s 120, defining a year as the period commencing on 1 January and ending on 31 December); cf **ECCLESIASTICAL LAW**. On the other hand, where a director was to receive a certain sum by way of remuneration 'in each year' (*Salton v New Beeston Cycle Co* [1899] 1 Ch 775), or where, under the companies legislation, a general meeting was to be held once at least in every year, it was held that a calendar year was contemplated (*Gibson v Barton* (1875) LR 10 QB 329, DC). As to the annual general meetings of companies see **COMPANIES** vol 14 (2009) PARA 630. A bequest to servants of a year's wages is prima facie taken to be intended for servants who have been hired at yearly wages, but the nature of the gift may explain for whom it is intended: *Re Ravensworth, Ravensworth v Tindale* [1905] 2 Ch 1, CA. See also *Blackwell v Pennant* (1852) 9 Hare 551; and **WILLS** vol 50 (2005 Reissue) PARAS 650-651.

3 See *Grant v Maddox* (1846) 15 M & W 737 (see **LICENSING AND GAMBLING** vol 67 (2008) PARA 238); *R v Swyer* (1830) 10 B & C 486, where the three years mentioned in a charter were held to mean the three terms during which three successive mayors might hold office. See also **CUSTOM AND USAGE** vol 12(1) (Reissue) PARA 670; **DEEDS AND OTHER INSTRUMENTS**.

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## (2) DIVISIONS SHORTER THAN A YEAR

### (i) Quarters and Quarter Days

#### 306. Mode of division.

For some purposes<sup>1</sup>, and especially in the relations of landlord and tenant, the year is divided into four quarters, the four usual quarter days being the four feast days, Lady Day (25 March),

Midsummer Day (24 June), Michaelmas Day (29 September) and Christmas Day (25 December)<sup>2</sup>.

The half-quarter days are 2 February, 9 May, 11 August and 11 November (Martinmas).

1 As to the terms and sittings of the courts see **CIVIL PROCEDURE** vol 11 (2009) PARA 64.

2 As to the commencement, duration and determination of tenancies see generally **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARAS 1 et seq, 168 et seq, 498 et seq; and **AGRICULTURAL LAND** vol 1 (2008) PARAS 352-354 (commencement of an agricultural tenancy according to custom).

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## (ii) Months

### 307. Variant meanings.

'Month' is used in several senses. It may mean one of the 12 unequal parts into which the calendar year is divided; it may mean the period which, beginning on any day of a calendar month other than the first, ends on the day next before the corresponding day of the next month; or it may denote a lunar month, that is to say a period consisting of 28 days<sup>1</sup>.

1 As to the meaning of 'months' in a charterparty see **CUSTOM AND USAGE** vol 12(1) (Reissue) PARA 670; and as to the meaning of 'months' for the purpose of income tax liability see **INCOME TAXATION** vol 23(1) (Reissue) PARA 770. A six months' tenancy might mean a tenancy for 168 days or a tenancy for half a year or 182 days: *Catesby's Case* (1607) 6 Co Rep 61b. As to the period of notice to determine a tenancy from year to year see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 216 et seq.

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### 308. Meaning of 'month' in pre-1850 statutes and pre-1926 instruments.

As a general rule, and in the absence of anything to indicate an intention to the contrary, where the term 'month'<sup>1</sup> is used in a contract made and coming into operation before 1926, or in a statute enacted before 1851, it is taken to mean a lunar month<sup>2</sup>. The question whether it was intended to use the word in another sense must be decided according to the ordinary rules of construction; it may be shown that in a particular place, business or trade the word has acquired a secondary meaning<sup>3</sup>.

1 For the variant meanings of 'month' see PARA 307.

2 *Lacon v Hooper* (1795) 6 Term Rep 224; *Re Humphreys, ex p Humphreys* (1833) Mont & B 413; *Helsham-Jones v Hennen & Co* (1914) 84 LJ Ch 569; *P Phipps & Co (Northampton and Towcester Breweries) Ltd v Rogers* [1925] 1 KB 14, CA. See also *Morrell v Studd and Millington* [1913] 2 Ch 648. As to contracts after 1925, and statutes after 1850 see PARAS 309-310. In the absence of evidence showing a contrary intention, a stipulation for so many months' notice of determination of a tenancy meant so many lunar months' notice: *Rogers v Kingston-upon-Hull Dock Co* (1864) 11 LT 42; *P Phipps & Co (Northampton and Towcester Breweries) Ltd v Rogers* [1925] 1 KB 14, CA. In *R v Chawton Inhabitants* (1841) 1 QB 247, the lease being given for six months and so on from six months until either party should give six calendar months' notice, it was held that the context showed that

the lease was intended to be for calendar months. In *Lang v Gale* (1813) 1 M & S 111, it appeared from the conditions of sale that calendar months were intended. Calendar months were taken to be intended in *Biddulph v St John and Keeffe* (1805) 2 Sch & Lef 521; *Dowling v Foxall* (1809) 1 Ball & B 193; *Hipwell v Knight* (1835) 1 Y & C Ex 401; and *Erith Engineering Co Ltd v Sanford Riley Stoker Co and Babcock and Wilcox Ltd* (1920) 37 RPC 217, CA (notice to determine licence to use patent). On the other hand, the general rule in favour of lunar months was upheld in *Tullet v Linfield* (1764) 3 Burr 1455 ('a month to plead'); *Crooke v M'Tavish* (1828) 1 Bing 307 (construction of statute); *Simpson v Margitson* (1847) 11 QB 23 (action by agent for commission claimed in respect of sale of land); *Walcot v Botfield* (1854) 2 Eq Rep 758 (provision in a will for residence for six months); and *Hutton v Brown* (1881) 45 LT 343 (hire of chattels at a weekly rate for 26 months). See also **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARA 174.

3 *Bruner v Moore* [1904] 1 Ch 305; *Helsham-Jones v Hennen & Co* (1914) 84 LJ Ch 569; *P Phipps & Co (Northampton and Towcester Breweries) Ltd v Rogers* [1925] 1 KB 14, CA. Cf **CUSTOM AND USAGE** vol 12(1) (Reissue) PARA 665 et seq; **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARA 174.

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### 309. Meaning of 'month' in statutes after 1850.

In the construction of statutes passed after 1850, unless the contrary intention appears, 'month' means calendar month<sup>1</sup>.

1 Interpretation Act 1978 ss 5, 22(1), Sch 1, Sch 2 para 4(1)(a) (Sch 2 para 4(1)(a) amended by the Family Law Reform Act 1987 s 33, Sch 2 para 74, Sch 3 para 1, Sch 4). See also **STATUTES** vol 44(1) (Reissue) PARA 1387. The year 1850 is named because in that year a similar enactment, 13 & 14 Vict c 21 (Interpretation of Acts) (1850) (repealed), generally known as Lord Brougham's Act, was passed. See also **ECCELESIASTICAL LAW**. Before the passing of the Interpretation Act 1889 (repealed), provision had already been made in several statutes with regard to the construction of the word 'month' in those statutes: see eg the Bills of Exchange Act 1882 s 14(4), where 'month' in a bill of exchange is defined to mean a calendar month; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARAS 1434, 1439. In any sentence of imprisonment, 'month' means calendar month unless the contrary is expressed: Prison Act 1952 s 24(1). This does not apply, however, in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 2(1)(a). See also *A-G (Slavin) v Halpin* [1951] IR 196.

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### 310. Meaning of 'month' in instruments after 1925.

In all deeds, contracts, wills, orders and other instruments executed, made or coming into operation after 31 December 1925, unless the context otherwise requires, 'month' means calendar month<sup>1</sup>. In mortgage transactions a month has always been taken to mean a calendar month<sup>2</sup>; and according to the custom in the City of London a month in a mercantile transaction has always been deemed to be a calendar month<sup>3</sup>.

In ecclesiastical matters the computation has to be made according to the calendar, and thus six months' notice has always been taken to mean six calendar months<sup>4</sup>.

1 Law of Property Act 1925 s 61(a). See **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARA 171. Where 'month' occurs in any judgment, order, direction or other document under the Civil Procedure Rules, time is computed by calendar months: see CPR 2.10. This follows the former RSC Ord 3 r 1: see *Re A Debtor (No 266*

of 1940), *ex p Judgment Creditors v Judgment Debtor* [1940] Ch 470, [1940] 2 All ER 303, CA; and **CIVIL PROCEDURE** vol 11 (2009) PARA 90. See also *Re Figgis, Roberts v McLaren* [1969] 1 Ch 123, [1968] 1 All ER 999.

As to the Civil Procedure Rules (CPR), which replace the Rules of the Supreme Court and the County Court Rules, see **CIVIL PROCEDURE**. The CPR apply to proceedings issued on or after 26 April 1999, and new steps taken in existing proceedings, as prescribed: CPR 51.1; *Practice Direction--Transitional Arrangements* PD51. As to the extent to which cases decided under RSC or CCR may be cited in relation to CPR see **CIVIL PROCEDURE** vol 11 (2009) PARA 33.

2 *Schiller v Petersen & Co* [1924] 1 Ch 394, CA. See **MORTGAGE** vol 77 (2010) PARA 729.

3 *Turner v Barlow* (1863) 3 F & F 946, where the contract related to work to be done by the defendant as an engraver, and it was held that the transaction was not a mercantile one, and that accordingly the general rule applied. The exception does not extend to commercial documents elsewhere than in the City: *Bruner v Moore* [1904] 1 Ch 305. In *Webb v Fairmaner* (1838) 3 M & W 473, commented on in *Simpson v Margitson* (1847) 11 QB 23, it was apparently assumed that calendar months were intended: see *Re An Indenture etc, Sir Herbert Marshall & Sons Ltd v John Brinsmead & Sons Ltd* (1912) 106 LT 460; **CUSTOM AND USAGE** VOL 12(1) (Reissue) PARA 670; and **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARA 174.

4 *Catesby's Case* (1607) 6 Co Rep 61b. See also *Franco v Alvares* (1746) 3 Atk 342; *Bluck v Rackham* (1846) 5 Moo PCC 305. This computation is that with which the Church is supposed to be most familiar: see *Cathcart v Hardy* (1814) 2 M & S 534; and PARA 305 note 2. Cf **ECCLIASTICAL LAW**.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/1. THE DIVISIONS OF TIME/(2) DIVISIONS SHORTER THAN A YEAR/(ii) Months/311. Calendar month running from arbitrary date.

### 311. Calendar month running from arbitrary date.

When the period prescribed is a calendar month running from any arbitrary date the period expires upon the day in the succeeding month corresponding to the date upon which the period starts, save that, if the period starts at the end of a calendar month which contains more days than the next succeeding month, the period expires at the end of that succeeding month<sup>1</sup>.

If a period of one calendar month includes the last day of February there must be 29 or 28 days, according as the year is or is not a leap year<sup>2</sup>.

1 A period of a month which begins on 28 January, or any later day in that month, must in the ordinary year terminate on 28 February. Such a period can never extend into a third month: see *Migotti v Colvill* (1879) 4 CPD 233, CA, where it was held that a sentence of imprisonment for one calendar month pronounced on 31 October ends on 30 November, and a bill of exchange dated 29 January and payable in one calendar month is, apart from days of grace, payable on 28 February, or, in a leap year, on 29 February. Cf *CA Stewart & Co v Phs Van Ommereen (London) Ltd* [1918] 2 KB 560, CA, where a stipulation for payment for the hire of a ship in a charterparty 'per calendar month' was held to refer to the ensuing calendar month and not to the next 30 or 31 days on which the ship should in fact be on hire. When a calendar month's notice of action is required and is given on 28 April, action may be commenced on 29 May: *Freeman v Read* (1863) 4 B & S 174. This was cited with approval in *Dodds v Walker* [1981] 2 All ER 609 at 610-611, [1981] 1 WLR 1027 at 1029, HL, per Lord Diplock. Where an application for a new tenancy was to be made 'not less than two months' after the giving of the landlord's notice, an application made on 23 May was held to have been made exactly two calendar months, no more and no less, after the giving of notice on 23 March, applying the corresponding date rule: *Ej Riley Investments Ltd v Eurostile Holdings Ltd* [1985] 3 All ER 181, [1985] 1 WLR 1139, CA (applying *Dodds v Walker* [1981] 2 All ER 609, [1981] 1 WLR 1027, HL). The corresponding date rule has also been applied by the European Court of Justice: see Case 152/85 *Misset v EC Council* [1987] ECR 223, (1987) Times, 23 March, ECJ. Where the period expires on the last day of a month containing fewer days than that in which the period began, no account is to be taken of anomalies arising by comparison with periods commencing on adjacent days: *University of Cambridge v Murray* [1993] ICR 460, EAT. See also **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1439. See also the Prison Act 1952 s 24(1); and PARA 309.

2 See *R v Worminghall Inhabitants* (1817) 6 M & S 350. See also note 1; and PARA 302 note 3.



Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/1. THE DIVISIONS OF TIME/(2) DIVISIONS SHORTER THAN A YEAR/(iii) Weeks, Days and Hours/312. Week.

### (iii) Weeks, Days and Hours

#### 312. Week.

A week is strictly the time between midnight on Saturday and the same hour on the next succeeding Saturday, but the term is also applied to any period of seven successive days<sup>1</sup>. There is no equivalent, when calculating periods of weeks, of the corresponding date rule used in construing periods of months<sup>2</sup>.

1 See eg the definitions of 'week' in the Employment Rights Act 1996 s 235(1) (see **EMPLOYMENT** vol 39 (2009) PARA 101) and in the Social Security Contributions and Benefits Act 1992 ss 30C(7), 122, 137 (s 30C repealed, as from a day to be appointed, by the Welfare Reform Act 2007 ss 28(1), 67, Sch 3, para 9(1), (5), Sch 8; Social Security Contributions and Benefits Act 1992 s 122 amended by the Tax Credits Act 2002 s 60, Sch 6; Social Security Contributions and Benefits Act 1992 s 137 amended by the Local Government Finance Act 1992 s 103, Sch 9 para 9(d)) (see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARAS 63, 173). As to the meanings of 'week' and 'benefit week' for social security purposes see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARAS 32, 67, 269; and as to the meaning of 'weeks' in a contract for the engagement of an actress see **CUSTOM AND USAGE** vol 12(1) (Reissue) PARA 670. As to the meaning of 'successive weeks' see *City of Aberdeen v Watt* (1901) 3 F (Ct of Sess) 787; and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 723.

2 *Okolo v Secretary of State for the Environment* [1997] 4 All ER 242, CA (for the purposes of the Acquisition of Land Act 1981 s 23(4), six weeks means 42 days). As to the corresponding date rule see PARA 311.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/1. THE DIVISIONS OF TIME/(2) DIVISIONS SHORTER THAN A YEAR/(iii) Weeks, Days and Hours/313. Day and night.

#### 313. Day and night.

The term 'day' is, like the terms 'year' and 'month', used in more senses than one<sup>1</sup>. A day is strictly the period of time which begins with one midnight and ends with the next. It may also denote any period of twenty-four hours<sup>2</sup>, and again it may denote the period of time between sunrise and sunset<sup>3</sup>. A 'business day' has been defined as any day except Saturday, Sunday, a bank holiday, Good Friday or Christmas Day<sup>4</sup>.

The term 'night' is also defined differently for different purposes<sup>5</sup>.

1 See *Hoye (Inspector of Taxes) v Forsdyke* [1981] 1 WLR 1442, 55 TC 281 (where it was held that the meaning of 'day' depends wholly on the context, and that in the Finance Act 1977 s 31, Sch 7 para 2 (repealed: see now the Income Tax (Earnings and Pensions) Act 2003 s 378; and **INCOME TAXATION** vol 23(1) (Reissue) PARA 622) the statutory context indicated it meant a calendar day of 24 hours, not a working day). As to the meaning of 'lay days', 'running days', 'working days' and 'weather working days' see *Nielsen v Wait* (1885) 16 QBD 67, CA; *Alvion Steamship Corpn Panama v Galban Lobo Trading Co SA of Havana* [1955] 1 QB 430, [1954] 3 All ER 324 (affd [1955] 1 QB 430, [1955] 1 All ER 457, CA); and **CARRIAGE AND CARRIERS** vol 7 (2008) PARAS 284, 288. See also **CUSTOM AND USAGE** vol 12(1) (Reissue) PARA 670. As to fractions of a day see PARA 345.

2 *Mercantile Marine Insurance Co v Titherington* (1864) 5 B & S 765; *Cornfoot v Royal Exchange Assurance Corpn* [1904] 1 KB 40, CA. Cf **INSURANCE** vol 25 (2003 Reissue) PARAS 316-317. See also *Yeoman v R* [1904] 2 KB 429, CA (charterparty); *Alvion SS Corpn Panama v Galban Lobo Trading Co SA of Havana* [1955] 1 QB 430, [1955] 1 All ER 457, CA; and **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 288. In *Lancashire and Yorkshire Rly Co v Swann* [1916] 1 KB 263, where a railway advice note provided for payment of demurrage if the goods were not unloaded and removed within 48 hours of the dispatch of the notice and stated that the times for unloading

were up to 1 pm on Saturday and up to 6 pm on other weekdays, it was held that in calculating the period of 48 hours the whole of each day except Sunday was to be counted, so that the defendant, who began unloading on a Saturday, the day after the dispatch of the notice, and finished on a Tuesday, was liable to pay one day's demurrage. As to the meaning of 'day of incapacity for work' see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 63. As to the meaning of 'clear days' see PARA 335 note 4.

3 For the purpose of distress the day ends with sunset, and any distraint of goods after sunset and before sunrise is illegal: *Tutton v Darke, Nixon v Freeman* (1860) 5 H & N 647. See **DISTRESS** vol 13 (2007 Reissue) PARA 1076. By the South Metropolitan Gaslight and Coke Company's Act 1869 (repealed), 'day' was defined as 24 hours running from 9 am: see *LCC v South Metropolitan Gas Co* [1904] 1 Ch 76, CA, where the word in issue was 'daily'.

4 CPR 6.2(b). As to bank holidays see PARA 321.

5 Eg for the purposes of the Shops Act 1950 s 31 (repealed) (employment of young persons at night), 'night' covered the period from 10 pm until 6 am As to the meaning of 'night' in connection with poaching see **ANIMALS** vol 2 (2008) PARA 791.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/1. THE DIVISIONS OF TIME/(2) DIVISIONS SHORTER THAN A YEAR/(iii) Weeks, Days and Hours/314. Hour.

### **314. Hour.**

'Hour' may mean any one of the 24 parts of a day or any period of 60 minutes<sup>1</sup>. 'Hours' may be used loosely as meaning a period of time, as in the phrase 'hours of darkness'<sup>2</sup>.

1 See PARA 345 text and note 6.

2 In certain road traffic regulations 'hours of darkness' is defined as the time between half-an-hour after sunset and half-an-hour before sunrise: see the Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 3(2), Table; and **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 393.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/1. THE DIVISIONS OF TIME/(3) THE LEGAL TIME/315. Local time.

## **(3) THE LEGAL TIME**

### **315. Local time.**

Apart from statute<sup>1</sup> or special convention, the hour of the day has to be ascertained by reference to the sun in the particular place. At a given moment, therefore, the time is different in different places. The hour at which a court is fixed to sit means *prima facie* the hour at the locality where the particular court is to sit, and not Greenwich mean time<sup>2</sup>. However, Greenwich mean time is now applied by statute<sup>3</sup>.

1 See PARA 316.

2 *Curtis v March* (1858) 3 H & N 866, where failure to appear in court in Dorchester, when the judge took his seat at 10 am (according to Greenwich mean time) constituted no default, since according to the local time it was some minutes short of 10 am.

3 See PARA 316.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/1. THE DIVISIONS OF TIME/(3) THE LEGAL TIME/316. Greenwich mean time.

### 316. Greenwich mean time.

For the purpose of statutes, subordinate legislation, deeds or other legal instruments, it is provided by statute that, unless the contrary is expressed (and subject to the provisions regarding Summer Time<sup>1</sup>), expressions of time are to be taken to refer to Greenwich mean time and not to local time<sup>2</sup>. Regard must be had to this rule in applying statutes<sup>3</sup> in which certain hours of the day are specified within which acts may or may not be done. It is apprehended that Greenwich, and not local, time must be considered in fixing the hour or day of an event with regard to which provision is made in an instrument such as a policy of insurance, and that on the other hand the statutory rule should not be applied in a case where the instrument was executed or the event was expected to happen or did happen in a foreign country<sup>4</sup>.

It has been held that 'sunset' in certain enactments is not such an expression of time as previously mentioned<sup>5</sup>, but refers to local time<sup>6</sup>.

1    Ie subject to the Summer Time Act 1972 s 3: see PARA 318.

2    See the Interpretation Act 1978 ss 9, 23(3), Sch 2 paras 1, 6; and **CIVIL PROCEDURE** vol 11 (2009) PARA 784; but see also *R v Logan* [1957] 2 QB 589, [1957] 2 All ER 688, C-MAC, where it was held that a statute said to commence on 1 January came into force on the day which was 1 January in the particular place where the Act had to be applied.

3    Eg the Marriage Act 1949 s 4 (hours for solemnisation of marriages: see **MATRIMONIAL AND CIVIL PARTNERSHIP LAW** vol 72 (2009) PARAS 82, 106).

4    See *R v Logan* [1957] 2 QB 589, [1957] 2 All ER 688, C-MAC.

5    See PARA 313.

6    *Gordon v Cann* (1899) 80 LT 20, DC, where the obligation imposed by what is now the Road Vehicle Lighting Regulations 1989, SI 1989/1796, reg 25 (see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 393), to light a carriage used on the road half-an-hour after sunset was in question, and it was held that regard must be had to the actual hour of sunset at the particular place; *Mackinnon v Nicolson* 1916 JC 6, where 'sunset' and 'sunrise' in the Salmon Fisheries (Scotland) Act 1862 s 27 (repealed), which made it an offence to fish for salmon between those times in certain circumstances, were held in Scotland to mean the times at which the sun sets and rises at the locus of the alleged offence. See also the Night Poaching Act 1828 s 12; and **ANIMALS** vol 2 (2008) PARA 791.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/1. THE DIVISIONS OF TIME/(3) THE LEGAL TIME/317. Summer time.

### 317. Summer time.

The period of summer time is a period prescribed by statute<sup>1</sup>, and is the period beginning at one o'clock, Greenwich mean time, in the morning of the last Sunday in March and ending at one o'clock, Greenwich mean time, in the morning of the last Sunday in October<sup>2</sup>.

1    See the Summer Time Act 1972 s 1. This Act consolidated the Summer Time Acts 1922 to 1947 (repealed). EC Council Directive 97/44 (OJ L206, 1.8.97, p 62) and the Summer Time Order 1997, SI 1997/2982 (lapsed) (made under the Summer Time Act 1972 s 2 (repealed)), provided for the summer time arrangements for the years 1998, 1999, 2000 and 2001. The Summer Time Act 1922 (repealed), originally a temporary measure, was

made permanent by the Summer Time Act 1925 s 1(1) (repealed). As to the territorial application of the Summer Time Act 1972 see PARA 318.

2 Summer Time Act 1972 s 1(2) (substituted by SI 2002/262). At the beginning of summer time clocks are put forward one hour, and at the end of summer time they are put back one hour. As to Greenwich mean time see PARA 316.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/1. THE DIVISIONS OF TIME/(3) THE LEGAL TIME/318. Reckoning of time during summer time.

### **318. Reckoning of time during summer time.**

During the period of summer time, the time for general purposes in Great Britain<sup>1</sup> is one hour in advance of Greenwich mean time<sup>2</sup>.

Wherever any reference to a point of time occurs in any enactment, Order in Council, order, regulation, rule, byelaw, deed, notice or other document whatsoever, the time referred to is, during the period of summer time, deemed to be the time fixed for general purposes under the Summer Time Act 1972<sup>3</sup>.

1 'Great Britain' means England, Wales and Scotland: see the Union with Scotland Act 1706, preamble art 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 3. The Summer Time Act 1972, however, applies also to Northern Ireland, the Channel Islands and the Isle of Man: see ss 4(1), 5(1).

2 See the Summer Time Act 1972 s 1(1) (amended by SI 2002/262). As to Greenwich mean time see PARA 316.

3 Summer Time Act 1972 s 3(1) (amended by SI 2002/262). A print-out from a Lion Intoximeter device recording results of a breath test for excess alcohol was not admissible for failure to comply with the Summer Time Act 1972 ss 1, 3 even though timed according to Greenwich mean time when British summer time was in effect at the time of the offence: *Parker v DPP* [1993] RTR 283, (1993) 157 JP 218. For the purposes of the Police and Criminal Evidence Act 1984 s 69 (repealed in relation to England and Wales by the Youth Justice and Criminal Evidence Act 1999 ss 60, 67(3), Sch 6), errors in the time or date of such print-outs caused by the Intoximeter device recording Greenwich mean time during British summer time which do not affect any material aspect of the document produced do not render the document inadmissible as evidence: *DPP v McKeown* [1997] 1 All ER 737, [1997] 1 WLR 295, HL; *DPP v Horswill* (2 July 1997, unreported). Nothing in the Summer Time Act 1972 affects the use of Greenwich mean time for the purposes of astronomy, meteorology or navigation, or affects the construction of any document mentioning or referring to a point of time in connection with any of those purposes: s 3(2).

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/1. THE DIVISIONS OF TIME/(3) THE LEGAL TIME/319. Timing of things done electronically.

### **319. Timing of things done electronically.**

Where the Communications Act 2003<sup>1</sup> authorises the giving or sending of a notification or other document by its delivery to a particular person (the 'recipient') and the notification or other document is transmitted to the recipient by means of an electronic communications network<sup>2</sup> or by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible, and the statutory requirements<sup>3</sup> are complied with, the transmission has effect for the purposes of specified enactments<sup>4</sup> as a delivery of the notification or other document to the recipient<sup>5</sup>. The Secretary of State<sup>6</sup> may by order make provision specifying, for the purposes of the specified enactments, the manner of determining the times at which things done under those enactments by means of electronic communications networks are done<sup>7</sup>, and an order may also make provision about the manner

of proving in any legal proceedings the times at which things done under those enactments by means of electronic communications networks are done<sup>8</sup>. An order may provide for such presumptions to apply (whether conclusive or not) as the Secretary of State considers appropriate<sup>9</sup>.

Under the Electronic Communications Act 2000, the appropriate minister<sup>10</sup> may by order made by statutory instrument modify the provisions of any enactment or subordinate legislation, or any scheme, licence, authorisation or approval issued, granted or given by or under any enactment or subordinate legislation, in such manner as he may think fit for the purpose of authorising or facilitating the use of electronic communications<sup>11</sup> or electronic storage (instead of other forms of communication or storage) for specified purposes<sup>12</sup>. Such an order may contain, inter alia, provision, in relation to cases in which the use of electronic communications or electronic storage is so authorised, for the determination of the time at which, or date on which, a thing done using any such communication or storage was done, or as to the manner in which they may be proved in legal proceedings<sup>13</sup>.

1    Ie the Communications Act 2003 s 394: see **TELECOMMUNICATIONS** vol 97 (2010) PARA 49.

2    As to the meaning of 'electronic communications network' see **TELECOMMUNICATIONS** vol 97 (2010) PARA 60.

3    Ie the requirements imposed by or under the Communications Act 2003 s 395: see **TELECOMMUNICATIONS** vol 97 (2010) PARA 50.

4    Ie the enactments specified in the Communications Act 2003 s 394(2) (amended by the Wireless Telegraphy Act 2006 s 125(1), Sch 9 Pt 1), namely (1) the Communications Act 2003; (2) the Office of Communications Act 2002; (3) the Telecommunications Act 1984 Sch 2; (4) the Broadcasting Act 1990; and (5) the Broadcasting Act 1996.

5    See the Communications Act 2003 s 395(1), (2); and **TELECOMMUNICATIONS** vol 97 (2010) PARA 50.

6    As to the Secretary of State for these purposes see **TELECOMMUNICATIONS** vol 97 (2010) PARA 84 note 1.

7    See the Communications Act 2003 s 396(1); and **TELECOMMUNICATIONS** vol 97 (2010) PARA 50.

8    See the Communications Act 2003 s 396(3); and **TELECOMMUNICATIONS** vol 97 (2010) PARA 50. At the date at which this volume states the law, no order had been made under s 396.

9    See the Communications Act 2003 s 396(4); and **TELECOMMUNICATIONS** vol 97 (2010) PARA 50.

10   As to the appropriate minister see the Electronic Communications Act 2000 ss 9, 10; and **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARA 616.

11   'Electronic communication' means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa), by means of an electronic communications network, or by other means but while in an electronic form: Electronic Communications Act 2000 s 15(1) (amended by the Communications Act 2003 s 406(1), Sch 17 para 158).

12   The purposes specified (Electronic Communications Act 2000 s 8(2)) are:

- 1    (1) the doing of anything which under any such provisions is required to be or may be done or evidenced in writing or otherwise using a document, notice or instrument;
- 2    (2) the doing of anything which under any such provisions is required to be or may be done by post or other specified means of delivery;
- 3    (3) the doing of anything which under any such provisions is required to be or may be authorised by a person's signature or seal, or is required to be delivered as a deed or witnessed;
- 4    (4) the making of any statement or declaration which under any such provisions is required to be made under oath or to be contained in a statutory declaration;
- 5    (5) the keeping, maintenance or preservation, for the purposes or in pursuance of any such provisions, of any account, record, notice, instrument or other document;

- 6 (6) the provision, production or publication under any such provisions of any information or other matter;
- 7 (7) the making of any payment that is required to be or may be made under any such provisions.

13 See the Electronic Communications Act 2000 s 8(4)(g), (5)(b); and **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARA 616. As to orders which have been made under this power see **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARA 616.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/1. THE DIVISIONS OF TIME/(4) GENERAL HOLIDAYS AND SUNDAYS/(i) Holidays/320. Meaning of 'holidays'.

## **(4) GENERAL HOLIDAYS AND SUNDAYS**

### **(i) Holidays**

#### **320. Meaning of 'holidays'.**

The term 'holidays' used in the larger sense covers the common law holidays, namely, in England<sup>1</sup>, Good Friday and Christmas Day, and the statutory holidays, which include those established by the Banking and Financial Dealings Act 1971 and by statutes and rules relating to legal procedure<sup>2</sup>. The Treasury may by order suspend financial dealings on specified days without such days being declared bank holidays<sup>3</sup>.

1 Common law and statutory holidays are not uniform throughout Great Britain: see the Banking and Financial Dealings Act 1971 s 1(1), Sch 1; and PARA 321.

2 As to vacations in the Supreme Court see **CIVIL PROCEDURE** vol 11 (2009) PARA 65.

3 See the Banking and Financial Dealings Act 1971 s 2; and PARA 321.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/1. THE DIVISIONS OF TIME/(4) GENERAL HOLIDAYS AND SUNDAYS/(i) Holidays/321. Bank holidays.

#### **321. Bank holidays.**

The following days must be kept in England and Wales as close holidays in all banks: (1) Easter Monday; (2) the last Monday in May; (3) the last Monday in August; (4) 26 December, provided that day is not a Sunday; and (5) 27 December in a year in which 25 or 26 December is a Sunday<sup>1</sup>. If, however, in any year it is inexpedient that one of these days should be a bank holiday, another day may be substituted by royal proclamation<sup>2</sup>. By the same means a special day may be proclaimed a bank holiday either throughout the United Kingdom<sup>3</sup> or in any place or locality in the United Kingdom<sup>4</sup>. Since 1974, New Year's Day (or, as appropriate, 2 January) has each year been declared a bank holiday in England, Wales and Northern Ireland by proclamation in the London Gazette; and since 1978 the first Monday in May has been declared a bank holiday by royal proclamation.

1 Banking and Financial Dealings Act 1971 s 1(1), Sch 1 para 1. Bank holidays in Scotland are New Year's Day (if it is not a Sunday or, if it is a Sunday, 3 January); 2 January (if it is not a Sunday or, if it is a Sunday, 3 January); Good Friday; the first Monday in May; the first Monday in August; 30 November, if it is not a Saturday or Sunday or, if it is a Saturday or Sunday, the first Monday following that day; and Christmas Day (if it is not a

Sunday or, if it is a Sunday, 26 December): Sch 1 para 2 (amended by the St Andrew's Day Bank Holiday (Scotland) Act 2007 s 1). Bank holidays in Northern Ireland are 17 March (if it is not a Sunday or, if it is a Sunday, 18 March); Easter Monday; the last Monday in May; the last Monday in August; 26 December (if it is not a Sunday); and 27 December (in a year in which 25 or 26 December is a Sunday): Banking and Financial Dealings Act 1971 Sch 1 para 3.

2 See the Banking and Financial Dealings Act 1971 s 1(2).

3 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Wales and Scotland: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man is within the United Kingdom. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 3. See also **STATUTES** vol 44(1) (Reissue) PARA 1383.

4 Banking and Financial Dealings Act 1971 s 1(3).

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/1. THE DIVISIONS OF TIME/(4) GENERAL HOLIDAYS AND SUNDAYS/(i) Holidays/322. Service of process on a bank holiday.

### **322. Service of process on a bank holiday.**

If a document (other than a claim form) is served at any time on a bank holiday, it will be treated as having been served on the next business day<sup>1</sup>.

1 CPR 6.26. See also PARAS 327, 329. As to the meaning of 'business day' see CPR 6.2(b); and PARA 313.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/1. THE DIVISIONS OF TIME/(4) GENERAL HOLIDAYS AND SUNDAYS/(i) Holidays/323. Other statutory provisions regarding holidays.

### **323. Other statutory provisions regarding holidays.**

A right to holidays and to holiday remuneration may be conferred on agricultural workers by an order made by the Agricultural Wages Board<sup>1</sup>.

There are provisions regulating the rest days and leave of members of police forces<sup>2</sup>.

1 See the Agricultural Wages Act 1948 s 3; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1236.

2 See the Police Regulations 2003, SI 2003/527, regs 26, 33; and **POLICE** vol 36(1) (2007 Reissue) PARAS 400-401.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/1. THE DIVISIONS OF TIME/(4) GENERAL HOLIDAYS AND SUNDAYS/(ii) Sundays/324. Sundays at common law.

## **(ii) Sundays**

### **324. Sundays at common law.**

In general the common law does not prohibit the doing on a Sunday of any act which otherwise is lawful nor render void the act so done<sup>1</sup>.

Sunday is, however, 'dies non juridicus', a day on which no judicial act<sup>2</sup> ought to be done<sup>3</sup>.

In a case of emergency, however, an interlocutory injunction, being an act in exercise of the equitable jurisdiction originally of the Lord Chancellor, can be granted validly on a Sunday<sup>4</sup>.

1 *Drury v Defontaine* (1808) 1 Taunt 131; *Begbie v Levi* (1830) 1 Cr & J 180; *Rawlins v West Derby Overseers* (1846) 2 CB 72; *Child v Edwards* [1909] 2 KB 753.

2 It has been held in Canada that the prohibition applies only to judicial acts by a judge or judicial officer and does not extend to acts by administrative tribunals even when required to act judicially: *A-G for Canada v Hirsch* (1960) 24 DLR (2d) 93.

3 See *Mackalley's Case* (1611) 9 Co Rep 65a and 66b, where it was held that an inquisition was bad on its appearing that the inquest was held on a Sunday; *Asmole v Goodwin* (1699) 2 Salk 624; and *Hoyle v Lord Cornwallis* (1720) 1 Stra 387, where the execution of a writ of inquiry on a Sunday was held to be void. The holding of an inquest on a Sunday is prohibited by the Coroners Rules 1984, SI 1984/552, r 18: see **CORONERS** vol 9(2) (2006 Reissue) PARAS 975, 1047. A claim form dated on a Sunday is a nullity, and the court takes notice of the fact that it was dated on that day: *Hanson v Shackelton* (1835) 4 Dowl 48 (citing the following passage from 3 Shepherd's Abridgement 181: 'If any part of the proceedings in a suit of law be entered and recorded to be done on Sunday, it makes the whole void'). See also *Taylor v Phillips* (1802) 3 East 155. As to the extent, if any, to which cases decided under RSC or CCR may be cited in relation to CPR see PARA 310 note 1. As to service of process, and arrest on a Sunday see PARA 327. The taking of sureties and commitment to prison in default are judicial acts which cannot be done on a Sunday: *Taylor v Phillips* (1802) 3 East 155; *R v Ramsay* (1867) 16 WR 191. See **MAGISTRATES**. See also, however, *Secretary of State for Employment v Associated Society of Locomotive Engineers and Firemen (No 2)* [1972] 2 QB 455, [1972] 2 All ER 949, CA, where the Court of Appeal sat on a Sunday to hear an appeal against a decision of the National Industrial Relations Court granting a ballot order under the emergency procedures of the Industrial Relations Act 1971 (repealed). Ministerial acts, however, may be lawfully done on a Sunday (*Mackalley's Case* (1611) 9 Co Rep 65a and 66b); but see **DISTRESS** vol 13 (2007 Reissue) PARA 963 (no distress may take place on a Sunday). A bill of exchange is not invalid merely because it is dated on a Sunday: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1415.

4 *Re N (infants)* [1967] Ch 512, [1967] 1 All ER 161, where Stamp J held that an injunction is an exception to the general common law rule that a judicial act cannot be done on a Sunday. As to the effect of a period expiring on a Sunday see PARA 340.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/1. THE DIVISIONS OF TIME/(4) GENERAL HOLIDAYS AND SUNDAYS/(ii) Sundays/325. Particular acts prohibited on Sundays and other days.

### 325. Particular acts prohibited on Sundays and other days.

Acts which are by statute prohibited on Sundays<sup>1</sup>, and in some instances (indicated by the addition in parentheses of the days concerned) also on other specified days, include the following:

- 1 (1) killing or taking game (Christmas Day)<sup>2</sup>;
- 2 (2) subject to exceptions, opening a large shop for the service of retail customers<sup>3</sup> (alternatively, the Jewish Sabbath)<sup>4</sup>;
- 3 (3) holding coroner's inquests<sup>5</sup>.

1 As to Sunday trading generally see the Sunday Trading Act 1994; and **TRADE AND INDUSTRY** vol 97 (2010) PARA 908 et seq.



2 As to killing or taking game on Christmas Day see **ANIMALS** vol 2 (2008) PARA 803. As to the meaning of 'game' see **ANIMALS** vol 2 (2008) PARA 717. There are also close seasons during which the taking and killing of game is prohibited: see **ANIMALS** vol 2 (2008) PARAS 804, 806.

3 See the Sunday Trading Act 1994 s 1(1), Sch 1 (amended by the Licensing Act 2003 s 198(1), Sch 6 para 110; the Christmas Day (Trading) Act 2004 s 4(1), (2); and by SI 2004/470 and SI 2006/2407). See also *Bury Metropolitan Borough Council v Law and Cowburn* (1983) 147 JP 540, DC, where taking customers' names was held not to be serving customers.

4 Sunday Trading Act 1994 s 1(1), Sch 2 Pt II. See also *R v London Committee of Deputies of British Jews, ex p Helmcourt Ltd* (1981) Times, 16 July, CA (sincerity of conscientious objection to trading on Saturday); *Barking and Dagenham London Borough Council v Essexplan* (1982) 81 LGR 408; and **TRADE AND INDUSTRY** vol 97 (2010) PARA 912.

5 See **CORONERS** vol 9(2) (2006 Reissue) PARAS 975, 1047.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/1. THE DIVISIONS OF TIME/(4) GENERAL HOLIDAYS AND SUNDAYS/(ii) Sundays/326. Sunday trading.

### 326. Sunday trading.

The law governing trading in large shops and working on Sundays is contained principally in the Sunday Trading Act 1994 and the Employment Rights Act 1996, which reform the legislation and make provision as to the rights of shopworkers in relation to Sunday trading<sup>1</sup>. In general, a large shop<sup>2</sup> may not open on Sunday for the serving of retail customers unless it is occupied by persons observing the Jewish Sabbath<sup>3</sup>; but, except on Easter Day, a large shop may open for any continuous period of six hours on a Sunday beginning no earlier than 10 am and ending no later than 6 pm<sup>4</sup>. The above provisions do not apply where the Sunday is Christmas Day<sup>5</sup>.

When a large shop is open on Sunday for the serving of retail customers, it must display a notice, inside and outside the shop, specifying the Sunday opening hours<sup>6</sup>.

A local authority can restrict loading and unloading at large shops on Sunday mornings<sup>7</sup>.

A retailer's lease or agreement entered into prior to the commencement of the provisions of the Sunday Trading Act 1994 may not be construed to require a shop to open on a Sunday<sup>8</sup>.

Shop workers are protected against dismissal, redundancy or other detriment if they refuse to work on Sunday<sup>9</sup>. A shop worker also has the right to give notice of objection to working on a Sunday<sup>10</sup> and a shop owner has an obligation to explain a shop worker's rights in a written statement<sup>11</sup>.

Contravention of the Sunday trading restrictions constitutes an offence<sup>12</sup>.

The law relating to Sunday trading is covered in detail elsewhere in this work<sup>13</sup>.

1 See **TRADE AND INDUSTRY** vol 97 (2010) PARA 908 et seq; and **EMPLOYMENT** vol 39 (2009) PARAS 297-301, 545, 554.

2 As to the meaning of 'large shop' see **TRADE AND INDUSTRY** vol 97 (2010) PARA 908 note 3.

3 See the Sunday Trading Act 1994 s 1(1), Sch 1 para 2(1), (2)(b), Sch 2 para 8(1); and **TRADE AND INDUSTRY** vol 97 (2010) PARAS 908, 912.

4 See the Sunday Trading Act 1994 s 1(1), Sch 1 para 2(2)(a), (3), (4) (Sch 1 para 2(3) substituted by SI 2004/470; Sunday Trading Act 1994 Sch 1 para 2(4) amended by the Christmas Day (Trading) Act 2004 s 4(1), (2)(a)); and **TRADE AND INDUSTRY** vol 97 (2010) PARA 908.

5 See the Sunday Trading Act 1994 s 1(1), Sch 1 para 2(5) (added by the Christmas Day (Trading) Act 2004 s 4(2)(b)); **TRADE AND INDUSTRY** vol 97 (2010) PARA 909. The opening of large shops on Christmas Day is prohibited by the Christmas Day (Trading) Act 2004 s 1.

6 See the Sunday Trading Act 1994 Sch 1 para 6 (amended by SI 2004/470); and **TRADE AND INDUSTRY** vol 97 (2010) PARA 911.

7 See the Sunday Trading Act 1994 s 2, Sch 3 (Sch 3 amended by the Christmas Day (Trading) Act 2004 s 4(3); and by SI 2004/470); and **TRADE AND INDUSTRY** vol 97 (2010) PARA 913.

8 See the Sunday Trading Act 1994 s 3; and **TRADE AND INDUSTRY** vol 97 (2010) PARA 914.

9 See the Employment Rights Act 1996 ss 45, 101(1)-(3), 105(1), (4), 108(3)(h), 109(3)(h) (s 105(1) amended by SI 2006/2059 and SI 2007/2974); and **EMPLOYMENT** vol 39 (2009) PARA 297.

10 See the Employment Rights Act 1996 s 40.

11 See the Employment Rights Act 1996 s 42 (amended by the Employment Rights (Dispute Resolution) Act 1998 s 1(2)(a)).

12 See the Sunday Trading Act 1994 Sch 1 para 7; and **TRADE AND INDUSTRY** vol 97 (2010) PARAS 908, 911.

13 See the Sunday Trading Act 1994; the Employment Rights Act 1996; **TRADE AND INDUSTRY** vol 97 (2010) PARA 908 et seq; and **EMPLOYMENT** vol 39 (2009) PARAS 297-301, 545, 554.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/1. THE DIVISIONS OF TIME/(4) GENERAL HOLIDAYS AND SUNDAYS/(ii) Sundays/327. Service of process on a Sunday.

### **327. Service of process on a Sunday.**

If a document in civil proceedings (other than a claim form) is served at any time on a Sunday, it will be treated as having been served on the next business day<sup>1</sup>. The issue or execution of a warrant by a magistrates' court on a Sunday is valid<sup>2</sup>. The service of a notice not concerned with a judicial proceeding is not ordinarily rendered void by its being effected on a Sunday<sup>3</sup>.

1 CPR 6.2(6). See also PARA 329. As to the meaning of 'business day' see CPR 6.2(b); and PARA 313.

2 Service of process on Sunday was formerly forbidden by the Sunday Observance Act 1677 s 6, but subsequently permitted in respect of search and arrest warrants by the Magistrates' Courts Act 1952 s 102(3). The Sunday Observance Act 1677 s 6 was repealed by the Statute Law (Repeals) Act 1969 s 1, Schedule Pt IV, and consequently the Magistrates' Courts Act 1952 s 102(3), was repealed as unnecessary by the Criminal Law Act 1977 s 65(5), Sch 13. See *Magee v Morris* [1954] 2 All ER 276, [1954] 1 WLR 806, DC (execution of search warrant on a Sunday).

3 *R v Leominster Inhabitants* (1862) 2 B & S 391 (notice of removal of a pauper); *Sangster v Noy* (1867) 16 LT 157 (notice of intention to quit by tenant). See also the cases cited in PARA 324 note 1.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/1. THE DIVISIONS OF TIME/(4) GENERAL HOLIDAYS AND SUNDAYS/(ii) Sundays/328. Suspension of financial dealings in the national interest.

### **328. Suspension of financial dealings in the national interest.**

If it appears to the Treasury<sup>1</sup> necessary or expedient to do so in the national interest, then, by order laid before Parliament, it may give with respect to a day specified in the order, subject to

any exceptions for which provision may be made by the order, all or any of the following directions<sup>2</sup>:

- 4 (1) a direction that no person carrying on the business of a banker may, without Treasury permission, effect on that day in the course of that business any transaction or any transaction of a specified kind<sup>3</sup>;
- 5 (2) a direction that no person on that day may without Treasury permission deal in any foreign currency<sup>4</sup> or foreign currency of a specified kind<sup>5</sup>;
- 6 (3) a direction that no person may on that day deal in any gold<sup>6</sup> or gold of a specified kind without Treasury permission<sup>7</sup>;
- 7 (4) a direction that no person may on that day deal in silver bullion without Treasury permission<sup>8</sup>;
- 8 (5) a direction that no member of any commodity exchange<sup>9</sup> or, as the case may be, a specified commodity exchange, may on that day, without Treasury permission, deal in futures in any commodity, or specified futures in any commodity<sup>10</sup>;
- 9 (6) a direction that no member of a stock exchange in the United Kingdom may on that day effect any transaction on that exchange<sup>11</sup>;
- 10 (7) a direction that no building society<sup>12</sup> may on that day effect in the course of its business any transaction or a transaction of a specified kind without Treasury permission<sup>13</sup>.

An obligation on a person to do a thing on a day on which he is prevented from doing it, or is unable to do it, by reason of any such order is deemed to be complied with if he does it as soon as practicable afterwards<sup>14</sup>. A person who knowingly or recklessly contravenes a direction under these provisions<sup>15</sup> is guilty of an offence<sup>16</sup>.

1 As to the functions of the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 516.

2 Banking and Financial Dealings Act 1971 s 2(1).

3 Banking and Financial Dealings Act 1971 s 2(1)(a). This provision does not, however, authorise the giving of directions to a person carrying on the business of a savings bank in respect of that business: s 2(2) (amended by SI 2001/1149).

4 'Foreign currency' means any currency other than sterling and any units of account defined by reference to more than one currency (whether or not including sterling): Banking and Financial Dealings Act 1971 s 2(6) (definition added by the Finance Act 1987 s 69).

5 Banking and Financial Dealings Act 1971 s 2(1)(b) (amended by the Finance Act 1981 s 136(2), Sch 19).

6 'Gold' includes gold coin, gold bullion and gold wafers: Banking and Financial Dealings Act 1971 s 2(6) (definition as added: see note 4).

7 Banking and Financial Dealings Act 1971 s 2(1)(c) (amended by the Finance Act 1981 Sch 19; and the Finance Act 1987 s 69).

8 Banking and Financial Dealings Act 1971 s 2(1)(d).

9 'Commodity exchange' means an association established in the United Kingdom for the purpose of facilitating dealings by its members in a commodity: Banking and Financial Dealings Act 1971 s 2(6). As to the meaning of 'United Kingdom' see PARA 321 note 3.

10 Banking and Financial Dealings Act 1971 s 2(1)(e).

11 Banking and Financial Dealings Act 1971 s 2(1)(g).

12 'Building society' means a building society within the meaning of the Building Societies Act 1986: Banking and Financial Dealings Act 1971 s 2(6) (definition added by the Building Societies Act 1986 s 120(1), Sch 18 Pt I para 8).

13 Banking and Financial Dealings Act 1971 s 2(1)(h) (added by the Building Societies Act 1986 Sch 18 Pt I para 8).

14 Banking and Financial Dealings Act 1971 s 2(3).

15 In the provisions of the Banking and Financial Dealings Act 1971 s 2(1).

16 Banking and Financial Dealings Act 1971 s 2(4). Such a person is liable on summary conviction to a fine of an amount not exceeding the prescribed sum (s 2(4)(a) (amended by the Magistrates Court Act 1980 s 32(2))) or on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both (Banking and Financial Dealings Act 1971 s 2(4)(b)). As to the prescribed sum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 141.

Where an offence under the Banking and Financial Dealings Act 1971 s 2 which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, that person is also guilty of the offence and is liable to be proceeded against: s 2(5). Where the affairs of a body corporate are managed by its members the same criminal liability applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: s 2(5).

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/2. COMPUTATION OF TIME/(1) CALCULATION OF A PRESCRIBED PERIOD OF TIME/329. Days included or excluded.

## 2. COMPUTATION OF TIME

### (1) CALCULATION OF A PRESCRIBED PERIOD OF TIME

#### 329. Days included or excluded.

When a period of time running from a given day or event to another day or event is prescribed by law or fixed by contract, and the question arises whether the computation is to be made inclusively or exclusively of the first-mentioned or of the last-mentioned day, regard must be had to the context and to the purposes for which the computation has to be made<sup>1</sup>. Where there is room for doubt, the enactment or instrument ought to be so construed as to effectuate and not to defeat the intention of Parliament or of the parties, as the case may be<sup>2</sup>. Expressions such as 'from such a day' or 'until such a day' are equivocal, since they do not make it clear whether the inclusion or the exclusion of the day named may be intended<sup>3</sup>. As a general rule, however, the effect of defining a period in such a manner is to exclude the first day and to include the last day<sup>4</sup>.

1 As to the construction of statutes generally see **STATUTES** vol 44(1) (Reissue) PARA 1369 et seq. As to the construction of contracts generally see **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARA 145. For the provisions for reckoning service for pension purposes as longer or shorter than its actual length see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 585; **LONDON GOVERNMENT**. For the purpose of computing any period of time in proceedings to which the CPR apply, any document (other than a claim form) served after 4.30 pm on any business day or at any time on a Saturday, Sunday or bank holiday is to be treated as having been served on the next business day: see CPR 6.26; and PARA 327. As to the meaning of 'business day' see PARA 313.

2 *Pugh v Duke of Leeds* (1777) 2 Cowp 714; *Lester v Garland* (1808) 15 Ves 248; *Re North, ex p Hasluck* [1895] 2 QB 264, CA; *Ladyman v Wirral Estates Ltd* [1968] 2 All ER 197. As to the duration of contracts of employment see **EMPLOYMENT** vol 40 (2009) PARA 680. As to time in respect of the right to bring an action see **LIMITATION PERIODS** vol 68 (2008) PARA 920 et seq.

3 *R v Stevens and Agnew* (1804) 5 East 244; *Lester v Garland* (1808) 15 Ves 248 (approved in *Re North, ex p Hasluck* [1895] 2 QB 264, CA); *Dakins v Wagner* (1835) 3 Dowl 535; *Wilkinson v Gaston* (1846) 9 QB 137.

4 *Pugh v Duke of Leeds* (1777) 2 Cowp 714; *Lester v Garland* (1808) 15 Ves 248; *Kerr v Jeston* (1842) 1 Dowd NS 538; *Russell v Ledsam* (1845) 14 M & W 574 (affd sub nom *Ledsam v Russell* (1847) 16 M & W 633, Ex Ch; (1848) 1 HL Cas 687); *Robinson v Waddington* (1849) 13 QB 753, where the day upon which a notice is served or an act is done was held to be excluded in computing the time for certain statutory appeals; *Backhouse v Mellor* (1859) 28 LJ Ex 141; *Isaacs v Royal Insurance Co Ltd* (1870) LR 5 Exch 296; *Re Hanson, ex p Forster* (1887) 56 LT 573, DC; *South Staffordshire Tramways Co v Sickness and Accident Assurance Association* [1891] 1 QB 402, CA; *Re Maud, ex p Townend* (1891) 8 Morr 144, DC; *Radcliffe v Bartholomew* [1892] 1 QB 161, DC, where the statutory time for laying a complaint was held to exclude the day on which the offence was committed; *Sickness and Accident Assurance Association v General Accident Assurance Corp* (1892) 19 R (Ct of Sess) 977; *Sheffield Corp v Sheffield Electric Light Co* [1898] 1 Ch 203; *Goldsmiths' Co v West Metropolitan Ry Co* [1904] 1 KB 1, CA (approving *Russell v Ledsam* (1845) 14 M & W 574, but distinguished in *Hare v Gocher* [1962] 2 QB 641, [1962] 2 All ER 763, DC); *Queen Anne's Bounty v Tithe Redemption Commission (No 2)* [1939] Ch 155, [1938] 4 All ER 368, CA; *Cartwright v MacCormack (Trafalgar Insurance Co Ltd, third party)* [1963] 1 All ER 11, [1963] 1 WLR 18, CA; *Trow v Ind Coope (West Midlands) Ltd* [1967] 2 QB 899, [1967] 2 All ER 900, CA, where, in a lease for a period 'beginning with the date of . . .', the first day was included (followed in *Hammond v Haigh Castle & Co Ltd* [1973] 2 All ER 289, [1973] ICR 148, NIRC (dismissal from employment); and *Re Lympne Investments Ltd* [1972] 2 All ER 385, [1972] 1 WLR 523); *Re Figgis, Roberts v McLaren* [1969] 1 Ch 123, [1968] 1 All ER 999 (devise to wife if she should be living at the expiration of a period of three months from the testator's death); *Warr v Warr* [1975] Fam 25, [1975] 1 All ER 85 (divorce: two-year separation period); *Dodds v Walker* [1981] 2 All ER 609, [1981] 1 WLR 1027, HL (termination of business tenancy); *IRC v Trustees of Sir John Aird's Settlement* [1984] Ch 382, [1983] 3 All ER 481, CA (appointments of capital to beneficiaries of discretionary trust contingent upon their surviving for the period of one day the designated person, with the day of the contingent event excluded). Both days must be included if the word 'inclusive' is added: *Sickness and Accident Assurance Association v General Accident Assurance Corp* (1892) 19 R (Ct of Sess) 977. As to 'clear days' see PARA 335.

For cases dealing with the period for bringing a claim for unfair dismissal see *Camden and Islington Community Services NHS Trust v Kennedy* [1996] IRLR 381, EAT; *Biggs v Somerset County Council* [1996] 2 All ER 734, [1996] IRLR 203, CA; *Hassan v Odeon Cinemas Ltd* [1998] ICR 127; *Widdicombe v Longcombe Software Ltd* [1998] ICR 710.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/2. COMPUTATION OF TIME/(1) CALCULATION OF A PRESCRIBED PERIOD OF TIME/330. Date of commencement of interest or benefit.

### 330. Date of commencement of interest or benefit.

Where by any instrument some interest or benefit is secured for a certain time, as in a lease for years or letters patent availing for a certain period, and the date of the commencement of the term is expressed in the instrument, the term commences from midnight at the end of that day<sup>1</sup>. Where the date of the commencement of the term is not expressed, the rule is that prima facie the day of the date of the instrument<sup>2</sup> (being the date on which the instrument was delivered or issued, or, in the case of a deed, the day on which the deed was delivered<sup>3</sup>), is included in the term<sup>4</sup>.

From the context, however, it may appear that the anniversary of the initial day, and not the initial day itself, was intended to be included<sup>5</sup>. An indication to this effect in a lease is afforded by a provision that rent is to be paid on the usual quarter days, since it is presumed that rent is intended to be paid during the continuance of the term<sup>6</sup>.

1 *Meggesson v Groves* [1917] 1 Ch 158, where a tenancy for a term of years from 25 March was held to commence at midnight on 25/26 March. See also *Rains v Ogle* [1921] 1 KB 576; and *W H Brakspear & Sons Ltd v Barton* [1924] 2 KB 88, cases in which premises were agreed to be let from 25 March 1920, and rent was held to have been increased since 25 March 1920, within the meaning of the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 s 1 (repealed); *Cartwright v MacCormack (Trafalgar Insurance Co Ltd, Third Party)* [1963] 1 All ER 11, [1963] 1 WLR 18, CA, where a motor insurance cover note was held to cover the period from midnight on the day of issue until midnight on the day of expiry.

2 'The day of the date hereof' and 'the date hereof' mean the same thing: *Pugh v Duke of Leeds* (1777) 2 Cowp 714; *Watson v Pears* (1809) 2 Camp 294; *Williams v Nash* (1859) 28 Beav 93. As to the presumption as regards the date of execution of a deed see **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARA 193.

3 See **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARA 31.

4 *Clayton's Case* (1585) 5 Co Rep 1a, where in regard to a lease dated 26 May to have and to hold for three years from henceforth, the deed not being delivered until 20 June, it was held that, as this day was included in the term, so 19 June of the third year was the last day of the term; *English v Cliff* [1914] 2 Ch 376, where a term prescribed by a settlement dated 13 May 1892 was held to commence from midnight on 12 May. However, see *Cornish v Cawsy* (1648) Aleyn 75. As to the construction of instruments executed on a day subsequent to that named in the instrument see also *Pugh v Duke of Leeds* (1777) 2 Cowp 714, where the deed was delivered on the date named in it, and would have been void, as not being a lease in possession, unless construed as taking effect on the day of its date; *Doe d Cox v Day* (1809) 10 East 427; *Steele v Mart* (1825) 4 B & C 272; *Wilkinson v Gaston* (1846) 9 QB 137 at 142; *Browne v Burton* (1847) 5 Dow & L 289. In *Pugh v Duke of Leeds* (1777) 2 Cowp 714, *Doe d Cox v Day* (1809) 10 East 427, and *Russell v Ledsam* (1845) 14 M & W 574 (affd sub nom *Ledsam v Russell* on other grounds (1847) 16 M & W 633, Ex Ch; (1848) 1 HL Cas 687), where the efficacy of renewed letters patent depending on the date when prior letters came into force was in question, the decision was based on the principle that the courts strive to uphold transactions if this is possible ('ut res magis valeat quam pereat'): see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 236.

5 Eg insurance policies: see **INSURANCE** vol 25 (2003 Reissue) PARA 146 et seq. See *Pugh v Duke of Leeds* (1777) 2 Cowp 714 per Lord Mansfield CJ.

6 *Ackland v Lutley* (1839) 9 Ad & El 879; *Sandill v Franklin* (1875) LR 10 CP 377, where, by agreement dated 20 December 1872, property was let for a year and so on from year to year at an annual rent, the first payment to be made on 25 March 1873, and it was held that the term began on 26 December. As to a lease dated on a day subsequent to that on which the term actually began see *Simner v Watney* (1911) 28 TLR 162, CA; *Ladyman v Wirral Estates Ltd* [1968] 2 All ER 197; and **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 259.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/2. COMPUTATION OF TIME/(1) CALCULATION OF A PRESCRIBED PERIOD OF TIME/331. Period terminable by notice.

### 331. Period terminable by notice.

In the case of a tenancy terminable by notice, the day to be specified in the notice to quit given by a landlord must depend on the method of computation adopted. According as the day from which a tenancy from year to year has to run is included or excluded in the year, so the day before the anniversary of that day or the anniversary of that day is the last day of the tenancy<sup>1</sup>.

1 *Sidebotham v Holland* [1895] 1 QB 378, CA, where a notice to quit on 19 May, being the day on which the tenancy began, was held good; *Ladyman v Wirral Estates Ltd* [1968] 2 All ER 197, where the tenancy ran from 1 May, and notice to quit on 30 April was held good; *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749, [1997] 3 All ER 352, HL. See **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 236.

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### 332. Duration of protection order.

The benefit of a protection order expressed to be given until a day for which a meeting of creditors is convened must clearly be intended to cover that day<sup>1</sup>.

1 *Backhouse v Mellor* (1859) 28 LJ Ex 141. Cf *Ammerman v Digges* (1861) 12 ICLR App I, where, in a letter of licence from creditors to a debtor 'for and during a year from the date thereof', it was held that the day of the date should be excluded in calculating the year.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/2. COMPUTATION OF TIME/(1) CALCULATION OF A PRESCRIBED PERIOD OF TIME/333. Period of accumulations.

### 333. Period of accumulations.

The period of 21 years from the death of the settlor or testator which constitutes the second of the statutory periods for which a direction for accumulation may validly be made<sup>1</sup> includes the whole of the anniversary of the date of death<sup>2</sup>.

<sup>1</sup> See the Law of Property Act 1925 s 164(1)(b); and **PERPETUITIES AND ACCUMULATIONS** vol 35 (Reissue) PARA 1121.

<sup>2</sup> *Gorst v Lowndes* (1841) 11 Sim 434. See also **PERPETUITIES AND ACCUMULATIONS** vol 35 (Reissue) PARA 1131.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/2. COMPUTATION OF TIME/(2) PERIOD ON EXPIRATION OF WHICH AN ACT MAY BE DONE/334. Exclusion of the last day.

## (2) PERIOD ON EXPIRATION OF WHICH AN ACT MAY BE DONE

### 334. Exclusion of the last day.

When a period is fixed before the expiration of which an act may not be done, the person for whose benefit the delay is prescribed has the benefit of the entire period, and accordingly in computing it the day from which it runs as well as the day on which it expires must be excluded<sup>1</sup>, and the act may not be done before midnight of that day<sup>2</sup>.

On the other hand, in computing the ten days required for the notice of an appeal to the former courts of quarter sessions<sup>3</sup>, it was held that, while the day of service should be excluded, the first day of the sessions should be included<sup>4</sup>.

<sup>1</sup> *Blunt v Heslop* (1838) 8 Ad & El 577. See also *R v Long* [1960] 1 QB 681, [1959] 3 All ER 559, CCA; cf *Rightside Properties Ltd v Gray* [1975] Ch 72, [1974] 2 All ER 1169 (notice to complete purchase of land). However, see also *Schnabel v Allard* [1967] 1 QB 627, [1966] 3 All ER 816, CA (notice to quit: first day included, last day excluded). In *Browne v Black* [1912] 1 KB 316, CA, decided on a statute which provided that no attorney should commence an action for costs until after the expiration of one month or more after he had delivered his bill or sent it by post, it was held that both days must be excluded, the expression 'or more' being equivalent to 'at least': see **LEGAL PROFESSIONS** vol 66 (2009) PARA 956. In *Re Hector Whaling Ltd* [1936] Ch 208 provision for not less than 21 days' notice of a special resolution in what is now the Companies Act 2006 s 307(2), was held to mean 21 clear days exclusive of the day of service of the notice and the day of the meeting: see **COMPANIES** vol 14 (2009) PARA 632. On the other hand, in *Re Starkey, ex p Farquhar* (1826) Mont & M 7, it was held that in counting the two months between the day on which a mortgage was executed and that on which a commission in bankruptcy issued, the day of execution should be included. See also *R v Shropshire Justices* (1838) 8 Ad & El 173; *Mitchell v Foster* (1840) 12 Ad & El 472; *Young v Higgon* (1840) 6 M & W 49. In these cases the intending plaintiff had to give notice of action so many days at least before commencing his action, and it was held that the days on which notice was given and proceedings taken must both be excluded (overruling *R v Adderley* (1780) 2 Doug KB 463 and *Castle v Burditt* (1790) 3 Term Rep 623). See further *Roberts v Stacey* (1810) 13 East 21; *Zouch v Empsey* (1821) 4 B & Ald 522 (requirement of 14 days' notice at least to creditors before motion to discharge debtor); *Chambers v Smith* (1843) 12 M & W 2, where 'not less than 15 days' was held to mean 15 clear days; *Freeman v Read* (1863) 4 B & S 174 (Limitation of Actions and Costs Act 1842 s 4, requiring one calendar month's notice before action (cited with approval by Lord Diplock in *Dodds v Walker* [1981] 2 All ER 609 at 610-611, [1981] 1 WLR 1027 at 1029, HL: see **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 720)); *Re Railway Sleepers Supply Co* (1885) 29 ChD 204 (following *Young v Higgon*

(1840) 6 M & W 49); *E J Riley Investments Ltd v Eurostile Holdings Ltd* [1985] 3 All ER 181, [1985] 1 WLR 1139, CA (applying *Dodds v Walker* [1981] 2 All ER 609, [1981] 1 WLR 1027, HL) where the last day was included so that two calendar months exactly was held to be 'not less than two months'.

2 *Page v More* (1850) 15 QB 684. For instance, when seven days' notice to quit is required in order to determine a tenancy, a notice given on Monday (although given before noon) requiring the tenant to quit on the next Monday at noon is not good: *Weston v Fidler* (1903) 47 Sol Jo 567, DC. See also *Lawford v Davies* (1878) 4 PD 61, where 21 days' residence required by statute before marriage was held not to be satisfied by residence from early on the morning of 1 July until noon on 21 July; *Sullivan v Sheehan* (1916) 50 ILT 41, where it was held that a summons for possession served on the day of the expiry of a notice to quit was premature; *Carapanayoti & Co Ltd v Comptoir Commercial Andre & Cie SA* [1972] 1 Lloyd's Rep 139, CA, where the port of destination had to be declared not later than 21 days before the commencement of the shipping period, and it was held that the day of commencement was to be excluded in making the calculation; *Manorlike Ltd v Le Vitas Travel Agency and Consultancy Services Ltd* [1986] 1 All ER 573, [1986] 1 EGLR 79, where notice to quit 'within a period of three months' was valid notice, since 'within' was capable of meaning 'during' or 'before or at the expiry of' that period and therefore included midnight on the last day of the period, so that the notice gave the tenant the full three months' notice to which it was entitled. As to the determination of weekly, monthly or other periodic tenancies see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 234.

3 Courts of quarter sessions were abolished by the Courts Act 1971 ss 1(2), 3 (repealed). As to notice of appeal to the Crown Court see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1987.

4 *R v West Riding of Yorkshire Justices* (1833) 4 B & Ad 685 (followed in *R v Cumberland Justices* (1835) 4 LJMC 72); *Liffin v Pitcher* (1842) 1 Dowl NS 767, where ten days were given to sign judgment, and it was held that five days which were holidays were included in this time; *Weeks v Wray* (1868) LR 3 QB 212 (order giving leave to proceed on expiration of three days after service; the only point decided was that the first day should be excluded); *Connelly v Bremner* (1886) LR 1 CP 557, where it was held that a defendant having a day in which to plead had the whole day following in which to do so.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/2. COMPUTATION OF TIME/(2) PERIOD ON EXPIRATION OF WHICH AN ACT MAY BE DONE/335. Expressions showing intention to exclude.

### 335. Expressions showing intention to exclude.

In many statutes<sup>1</sup>, statutory rules<sup>2</sup> and byelaws<sup>3</sup> the intention to exclude both days and to give the person affected a clear interval of time between the two is put beyond all doubt by the insertion of words such as 'clear days'<sup>4</sup> or so many days 'at least'<sup>5</sup>.

1 See eg (1) the Bills of Exchange Act 1882 s 14(2), with reference to bills payable at a fixed period after date or sight (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1434 et seq); (2) the Companies Act 2006 s 307(1), (2) (notice of general meeting of company) (see PARA 334 note 1; and **COMPANIES** vol 14 (2009) PARA 632); and (3) the Protection from Eviction Act 1977 s 5(1)(b) (notice to quit to be not less than four weeks before the date it takes effect (see note 5; and **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 234).

2 CPR 2.8 provides explicit rules for the computation of any period of time for doing any act specified by the CPR, a practice direction or a judgment or order of the court: see **CIVIL PROCEDURE**; and note 4. As to the CPR see PARA 310 note 1.

3 As to byelaws made by local authorities see **LOCAL GOVERNMENT** vol 69 (2009) PARA 553 et seq; **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 63, 202-203, 313.

4 A period of time for doing any act specified by the CPR, a practice direction or judgment or order of the court expressed as a number of days must be computed as a number of clear days: CPR 2.8(1), (2). 'Clear days' means that the day on which the period begins and, if the end of the period is defined by reference to an event, the day on which the event occurs, are not included in the computation: CPR 2.8(3).

5 *R v Herefordshire Justices* (1820) 3 B & Ald 581, where ten clear days' notice of appeal to the sessions was required; *Zouch v Empsey* (1821) 4 B & Ald 522 ('at least'); *Re Prangle* (1836) 4 Ad & El 781; *R v Shropshire Justices* (1838) 8 Ad & El 173 ('at least'); *Young v Higgon* (1840) 6 M & W 49 ('at least'); *Chambers v Smith* (1843) 12 M & W 2, where 'not less than 15 days' was held to mean 15 clear days (followed in *R v Turner* [1910] 1 KB 346, CCA); *R v Middlesex Justices* (1845) 3 Dow & L 109; *R v Aberdare Canal Co* (1850) 14 QB 854; *Watson*



*v Eales* (1857) 23 Beav 294, where both days were excluded in computing 'ten clear days' between the date of a notice to pay calls and the date of the forfeiture of shares on default; *Re Railway Sleepers Supply Co* (1885) 29 ChD 204, where, in an interval of 'not less than 14 days' between the passing and confirming of a resolution, the day of the meeting at which the resolution was passed and the day of the confirmatory meeting were both excluded; *Sneath v Valley Gold Ltd* [1893] 1 Ch 477, CA, where for the purpose of a requirement of 'at least 14 days' notice the day of notice of a company meeting and the day of the meeting were both excluded; *R v Long* [1960] 1 QB 681, [1959] 3 All ER 559, CCA, where 'at least three days' in the Criminal Justice Act 1948 s 23(1) (repealed) was held to mean three clear days; *Schnabel v Allard* [1967] 1 QB 627, [1966] 3 All ER 816, CA, where it was held (overruling *Thompson v Stimpson* [1961] 1 QB 195, [1960] 3 All ER 500, DC) that in the context of a notice to quit between a landlord and a tenant 'not less than four weeks' meant a period of four weeks, including the first and excluding the last day; *Rightside Properties Ltd v Gray* [1975] Ch 72, [1974] 2 All ER 1169, where it was held that a condition requiring 'at least 21 days' notice' meant 21 days exclusive of the day of service and the day of expiry of the notice. See also the cases cited in PARA 334 note 1.

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### **(3) PERIOD WITHIN WHICH AN ACT MUST BE DONE**

#### **336. Exclusion of first day.**

The general rule in cases in which a period is fixed within which a person must act or take the consequences is that the day of the act or event from which the period runs should not be counted against him<sup>1</sup>.

This general rule applies irrespective of whether the limitation of time is imposed by the act of a party or by statute<sup>2</sup>. Thus, where a period is fixed within which a criminal prosecution or a civil action may be commenced, the day on which the offence is committed or the cause of action arises is excluded in the computation<sup>3</sup>. So, also, where a statute provides that something may only be done within a certain period from the passing of the Act, the day on which the Act was passed is excluded<sup>4</sup>; and many other instances may be cited<sup>5</sup>. In particular, where an act is required by the Civil Procedure Rules, a practice direction or by any judgment or order of the court to be done within a specified period, the day on which the period begins is not included in computing the number of days<sup>6</sup>. Further, the rule excluding the day from which the period runs has been applied in construing the statutory provision by which the fact that goods seized by the sheriff are allowed to remain in his hands for 21 days constitutes an act of bankruptcy on the part of the owner, the date of the seizure being omitted in the computation<sup>7</sup>.

The court has no power to extend a period of time limited by statute for doing an act unless the statute so provides<sup>8</sup>.

1 *Lester v Garland* (1808) 15 Ves 248 (cited with approval by Lord Diplock in *Dodds v Walker* [1981] 2 All ER 609 at 610, [1981] 1 WLR 1027 at 1029, HL; and see also *Pritam Kaur v S Russell & Sons Ltd* [1973] QB 336, [1973] 1 All ER 617, CA); *Pellew v Wonford Inhabitants* (1829) 9 B & C 134 (followed in *R v West Riding of Yorkshire Justices* (1833) 4 B & Ad 685); *Blunt v Heslop* (1838) 8 Ad & El 577 (cf PARA 334 note 1); *Webb v Fairmaner* (1838) 3 M & W 473; *Cartwright v MacCormack (Trafalgar Insurance Co Ltd, Third Party)* [1963] 1 All ER 11, [1963] 1 WLR 18, CA. See also, however, *Trow v Ind Coope (West Midlands) Ltd* [1967] 2 QB 899, [1967] 2 All ER 900, CA (approving *Hare v Gocher* [1962] 2 QB 641, [1962] 2 All ER 763, DC) (period 'beginning with the date of': first day included in calculating period); *Hammond v Haigh Castle & Co Ltd* [1973] 2 All ER 289, [1973] ICR 148, NIRC, where the four-week period for making a complaint of unfair dismissal was held to include the day of termination of the contract; *Pruden v Cunard Ellerman Ltd* [1993] IRLR 317, EAT. See further *Swainston v Hetton Victory Club Ltd* [1983] 1 All ER 1179, [1983] ICR 341, CA (whether complaint of unfair dismissal 'presented' within three-month period); and *Trafford Metropolitan Borough Council v Total Fitness UK Ltd* [2002] EWCA Civ 1513, [2003] 2 P & CR 8 (general rule did not apply where landlord gave more notice than necessary and specified termination date of lease). Cf **CIVIL PROCEDURE** vol 11 (2009) PARA 88 et seq; and see note 2. Cf also the Export Control Order 2008, SI 2008/3231, art 2(3), by which any reference in that order to time after an event is a reference to a period of that length of time beginning on the day of that event.

2 The principle is of general application to statutes, whether they deal with civil or criminal matters: *Marren v Dawson Bentley & Co Ltd* [1961] 2 QB 135 at 143, [1961] 2 All ER 270 at 274 per Havers J.

3 See *Marren v Dawson Bentley & Co Ltd* [1961] 2 QB 135, [1961] 2 All ER 270 per Havers J. See also *Hardy v Ryle* (1829) 9 B & C 603 (overruling *Clarke v Davey* (1820) 4 Moore CP 465); *Radcliffe v Bartholomew* [1892] 1 QB 161, DC. Cf *Gelmini v Moriggia* [1913] 2 KB 549. In calculating the period for service of a notice of intended prosecution under what is now the Road Traffic Offenders Act 1988 s 1(1)(c) (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 1028), the date of the commission of the offence is excluded: *Stewart v Chapman* [1951] 2 KB 792, [1951] 2 All ER 613, DC. See, however, *Trow v Ind Coope (West Midlands) Ltd* [1967] 2 QB 899, [1967] 2 All ER 900, CA (statute); and *Hammond v Haigh Castle & Co Ltd* [1973] 2 All ER 289, [1973] ICR 148, NIRC (statute), which, it is submitted, are exceptions to the general rule, for which see also *Pritam Kaur v S Russell & Sons Ltd* [1973] QB 336, [1973] 1 All ER 617, CA; *Tanglecroft Ltd v Hemdale Group Ltd* [1975] 3 All ER 599, [1975] 1 WLR 1544, CA; and *Dodds v Walker* [1981] 2 All ER 609, [1981] 1 WLR 1027, HL. See also **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1987; **LIMITATION PERIODS** vol 68 (2008) PARA 920.

4 *Goldsmiths' Co v West Metropolitan Rly Co* [1904] 1 KB 1, CA (exercise of power of compulsory acquisition of land within three years from the passing of an Act). See also *Tiverton and North Devon Rly Co v Loosemore* (1884) 9 App Cas 480, HL (followed in *Great Western Rly Co v Midland Rly Co* [1908] 2 Ch 644, CA; affd sub nom *Midland Rly Co v Great Western Rly Co* [1909] AC 445, HL), where, notwithstanding a similar limit of time imposed by statute for the exercise of statutory powers in the construction of a railway, the company was held entitled, on acquiring a right to the land, to construct the railway under its common law powers after the expiration of the period so limited; *Truss v Olivier* (1924) 40 TLR 588, DC (proceedings to be taken within six months from the passing of an Act). As to the time within which proceedings must be taken see further **LIMITATION PERIODS** vol 68 (2008) PARA 901 et seq.

5 *Ex p Fallon* (1793) 5 Term Rep 283 (enrolment of annuity); *Watson v Pears* (1809) 2 Camp 294; *Williams v Burgess* (1840) 12 Ad & El 635 (filing of warrant of attorney within 21 days after execution); *Re Higham and Jessop* (1840) 9 Dowl 203 (award to be made within two calendar months after appointment of umpire); *Gibson v Muskett* (1842) 3 Scott NR 427; *Williams v Nash* (1859) 28 Beav 93 (payment of stamp duty on letters patent within three years; as to the time for such payments now see **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARA 316 et seq). See also the Insolvency Act 1986 Pts VIII-XI (ss 252-385) (see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 760). As to the time within which proceedings must be taken see ss 240, 341, 387; **CIVIL PROCEDURE; LIMITATION PERIODS** vol 68 (2008) PARA 901 et seq.

6 See CPR 2.8(1), (2), (3). As to the CPR see PARA 310 note 1.

7 *Re North, ex p Hasluck* [1895] 2 QB 264, CA.

8 *Kerridge v Lamdin* [1951] 1 KB 478, [1950] 2 All ER 1110, CA. See also *Donegal Tweed Co Ltd v Stephenson* (1929) 98 LJKB 657, DC. Cf **CIVIL PROCEDURE**.

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### 337. Last day of period.

Subject to certain exceptions<sup>1</sup>, the general rule is that, when an act may be done or a benefit enjoyed during a certain period, the act may be done or the benefit enjoyed up to the last moment of the last day of that period<sup>2</sup>. Hence, a notice required to be given within so many days from or before a given date must be at the latest given on the last of such days<sup>3</sup>.

However, where an act is required by the Civil Procedure Rules, a practice direction, or by any judgment or order of the court to be done within a specified period and the end of the period is defined by reference to an event, the day on which that event occurs is not included in computing the number of days<sup>4</sup>.

Where the court gives a judgment, order or direction which imposes a time limit for doing any act in proceedings to which the Civil Procedure Rules apply, the last date for compliance must, wherever practicable, be expressed as a calendar date and include the time of day by which the act must be done<sup>5</sup>. Where the date by which an act must be done is inserted in any

document to which the Civil Procedure Rules apply, the date must, wherever practicable, be expressed as a calendar date<sup>6</sup>.

1 See PARA 338 et seq.

2 *Startup v Macdonald* (1843) 6 Man & G 593; *Afovos Shipping Co SA v Pagnan, The Afovos* [1983] 1 All ER 449, [1983] 1 WLR 195, HL, where the time limit for payment under a charterparty expired at midnight, and notice to exercise the option of withdrawal was sent before midnight but after the normal banking hours, and it was held that the notice was premature and invalid.

3 *Steedman v Hakim* (1888) 22 QBD 16, CA; *Chambon v Heighway* (1890) 54 JP 520, DC; *Elliott v Popular Playhouse Ltd* (1909) Times, 1 April. For an example of the amendment of a writ on the last day of a limitation period see *Seabridge v H Cox & Sons (Plant Hire) Ltd* [1968] 2 QB 46, [1968] 1 All ER 570, CA (though see also *Ketteman v Hansel Properties Ltd* [1987] AC 189, [1988] 1 All ER 38, HL, overruling *Seabridge v H Cox & Sons (Plant Hire) Ltd* [1968] 2 QB 46, [1968] 1 All ER 570, CA, on the basis that under RSC Ord 15 r 8(4)(a) (see now CPR 19.3; *Practice Direction--Addition and Substitution of Parties* PD 19A) a defendant is not added as a party to an action until the amended writ has been served on him although the relevant amendment to the writ takes place on its being stamped). As to the extent, if any, to which cases decided under RSC or CCR may be cited in relation to CPR see PARA 310 note 1.

4 See CPR 2.8(1), (2), (3)(b).

5 CPR 2.9(1).

6 CPR 2.9(2).

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/2. COMPUTATION OF TIME/(3) PERIOD WITHIN WHICH AN ACT MUST BE DONE/338. Period for performance fixed by contract or will.

### 338. Period for performance fixed by contract or will.

Where a period is fixed by contract within which work is to be done or goods delivered, the day from which the period is made to run is generally excluded, and therefore the corresponding day at the end of the period is included<sup>1</sup>. Similarly, where a testator has by his will imposed on a person who is to take a benefit under it the performance of some condition within a limited time, the day of the testator's death is not included in the computation<sup>2</sup>.

1 *Webb v Fairmaner* (1838) 3 M & W 473 (sale of goods on 5 October to be paid for in two months; writ issued on 5 December held to be premature). See also **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 68. As to time in relation to contracts generally see **CONTRACT** vol 9(1) (Reissue) PARA 979 et seq. As to insurance policies see **INSURANCE** vol 25 (2003 Reissue) PARA 146 et seq.

2 *Lester v Garland* (1808) 15 Ves 248; *Miller v Wheatley* (1891) 28 LR Ir 144, where a devise was made to a person with a condition of defeasance on his failing to assume the testator's name within one year of his death and the name was assumed on the anniversary of that date; *Re Figgis, Roberts v McLaren* [1969] 1 Ch 123, [1968] 1 All ER 999 (devise to wife if she should be living at the expiration of a period of three months from testator's death). A condition requiring a decision to be taken within a reasonable time is not void for uncertainty: *Re Burton's Settlements, Scott v National Provincial Bank Ltd* [1955] Ch 82, [1954] 3 All ER 193. As to the time for payment of legacies generally see **EXECUTORS AND ADMINISTRATORS**.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/2. COMPUTATION OF TIME/(3) PERIOD WITHIN WHICH AN ACT MUST BE DONE/339. Former 'year and a day' rule.

### 339. Former 'year and a day' rule.

The 'year and a day' rule, which stipulated that for the crime of murder to be committed death had to occur within a year and a day of the hurt being done, has been abolished for all purposes<sup>1</sup>.

<sup>1</sup> See the Law Reform (Year and a Day Rule) Act 1996 s 1. In computing that period of a year and a day, the day on which the hurt was done was to be included. Cases in which the year and a day rule prevailed are mentioned in *Sir Henry Constable's Case* (1601) 5 Co Rep 106a at 107b. See also 1 Hawk PC 162.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/2. COMPUTATION OF TIME/(3) PERIOD WITHIN WHICH AN ACT MUST BE DONE/340. Period expiring on Sunday or holiday.

### 340. Period expiring on Sunday or holiday.

The fact that the last day of a prescribed period is a Sunday<sup>1</sup>, or other non-juridical day, does not as a general rule give the person who is called upon to act an extra day; it is no excuse for his omission to do the act on some prior day<sup>2</sup>.

This general rule does not, however, hold good where the effect of it would be to render performance of the act impossible. This would be the case if the whole of the prescribed period consisted of holidays, in which case the act may lawfully be done on the next possible day<sup>3</sup>.

Again, the general rule does not hold good where the act has to be done, not by the party only, but by the court or by the party in conjunction with the court. In such cases, when the last day limited for the performance of it happens to be a day when the court or its office is closed, the act may be done on the next practicable day<sup>4</sup>.

<sup>1</sup> As to acts prohibited on a Sunday see PARA 324 et seq.

<sup>2</sup> *Mesure v Britten* (1796) 2 Hy Bl 617; *R v Middlesex Justices* (1843) 7 Jur 396; *Rawlins v West Derby Overseers* (1846) 2 CB 72; *Rowberry v Morgan* (1854) 9 Exch 730; *Peacock v R* (1858) 4 CBNS 264; *Ex p Simpkin* (1859) 2 E & E 392; *Déchène v Montreal City* [1894] AC 640, PC. In all these cases the period limited for the doing of an act by one of the parties to a legal proceeding expired on a Sunday or other non-juridical day, and it was held that the doing of the act could not be postponed until the next day: cf PARA 341. See also *McNiven v Glasgow Corp* 1920 SC 584, where the time limited for commencing an action against a public authority expired on a Sunday, and a writ served on the following day was held to be out of time. In *Child v Edwards* [1909] 2 KB 753 it was held that distress levied on a Monday in respect of rent which fell due on the preceding Sunday was lawfully levied. In *Mardorf Peach & Co Ltd v Attica Sea Carriers Corp of Liberia* [1977] AC 850, [1977] 1 All ER 545, HL, the position where the due date for punctual payment under a charterparty falls on a day when banks are closed was considered. See **DISTRESS** vol 13 (2007 Reissue) PARA 963; **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 259. Sunday is reckonable as one of the 14 days within which an application to justices to state a case must be made: see **MAGISTRATES** vol 29(2) (Reissue) PARA 888.

<sup>3</sup> *Mayer v Harding* (1867) LR 2 QB 410, where a case stated had to be lodged in the Queen's Bench within three days after it was received from the magistrates, it was received on Good Friday, and it was validly lodged on the following Wednesday when the court office next opened. See also *Waterton v Baker* (1868) LR 3 QB 173; and **MAGISTRATES**.

<sup>4</sup> *Morris v Barrett* (1859) 7 CBNS 139; *Hughes v Griffiths* (1862) 13 CBNS 324. See also PARA 341. In *Mumford v Hitchcocks* (1863) 14 CBNS 361, it was held that the appearance to a writ was the combined act of the party and the court, and that therefore, if the court were closed on the last day of the limited period, appearance might be entered on the next day. Where a limitation period expires on a non-juridical day, it has been held that a writ issued on the next day when the court offices are open is not statute-barred: *Pritam Kaur v S Russell & Sons Ltd* [1973] QB 336, [1973] 1 All ER 617, CA (considering *Hodgson v Armstrong* [1967] 2 QB 299, [1967] 1 All ER 307, CA); *The Clifford Maersk* [1982] 3 All ER 905, [1982] 1 WLR 1292 (applying *Pritam Kaur v S Russell & Sons Ltd* [1973] QB 336, [1973] 1 All ER 617, CA). See also *Re Philipp and Lion* [1994] 1 BCLC 739, [1994] BCC 261 (applying *Pritam Kaur v S Russell & Sons Ltd* [1973] QB 336, [1973] 1 All ER 617, CA) (court offices closed on final day for making application for disqualification of company director; time extended to the next day the court office was open). Cf *Swainston v Hetton Victory Club Ltd* [1983] 1 All ER 1179, [1983] ICR 341, CA, where

the time limit for a complaint to a tribunal expired at midnight on a Sunday; the tribunal offices were closed, but a street letter box was available throughout the weekend for communications; and a complaint not presented until Monday was out of time since it could have been presented on Sunday (distinguishing *Pritam Kaur v S Russell & Sons Ltd* [1973] QB 336, [1973] 1 All ER 617, CA; and following the dictum of Sir John Donaldson P in *Hammond v Haigh Castle & Co Ltd* [1973] 2 All ER 289 at 291, [1973] ICR 148 at 151, NICR; and *Post Office v Moore* [1981] ICR 623, EAT). As to the extent, if any, to which cases decided under RSC or CCR may be cited in relation to CPR see PARA 310 note 1. As to the expiry of time when the court offices are closed see **CIVIL PROCEDURE** vol 11 (2009) PARA 88 et seq; and cf **COURTS**.

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### 341. Special provisions.

By various Acts of Parliament and statutory rules provision is made for cases in which the day or the last day on which an act may be done falls on a Sunday or other holiday and for the exclusion of such days in the computation of prescribed periods<sup>1</sup>.

When a meeting of a vestry<sup>2</sup>, corporation, whether ecclesiastical or civil, or a public company for the transaction of secular business is required by any Act, charter, grant, constitution, deed, testament, law, prescription or usage to be held on any Sunday, the meeting must take place on the preceding Saturday or the next succeeding Monday<sup>3</sup>.

Where the day or the last day on which anything is required or permitted by or under the Local Government Act 1972 to be done is a Sunday, Christmas Day, Good Friday, bank holiday<sup>4</sup> or a day appointed for public thanksgiving or mourning, the requirement or permission is deemed to relate to the first day thereafter which is not one of those days<sup>5</sup>.

Where the last day of the time of payment as fixed by a bill is a non-business day, the bill is due and payable on the succeeding business day<sup>6</sup>.

When the time prescribed by the Civil Procedure Rules, a practice direction, or by any judgment or order of the court for doing any act at the court office ends on a day on which that office is closed the act is in time if done on the next day on which that office is open<sup>7</sup>.

When a term of imprisonment or of detention in a young offender institution, a secure training centre or a remand centre<sup>8</sup> expires on a Sunday, Christmas Day or Good Friday (and, in the case of a person serving a term of more than five days, a Saturday or a bank holiday), the prisoner or detainee is to be discharged on the day next preceding<sup>9</sup>.

Where by a special Act power was given to test gas 'daily' it was held to include power to test on Sundays<sup>10</sup>.

1 As to computation under rules of court see PARA 343. No person must be compelled to make any payment or do any act on a bank holiday which he could not be compelled to make or do on Christmas Day or Good Friday; the obligation to make the payment or do the act applies to the day following the bank holiday: Banking and Financial Dealings Act 1971 s 1(4).

2 Vestries have now been rendered virtually obsolete: see **ECCELSIASTICAL LAW** vol 14 PARA 568.

3 Sunday Observance Act 1833 s 1 (amended by the Statute Law Repeals (No 2) Act 1890). The Sunday Observance Act 1833 was repealed as to boroughs by the Municipal Corporations Act 1882 s 5.

4 As to bank holidays see PARA 321.

5 Local Government Act 1972 s 243(1). See also **LOCAL GOVERNMENT** vol 69 (2009) PARA 128. Similar provision is made in respect of elections by the Representation of the People Act 1983 s 119(1)(a), (2) (s 119(2) substituted by the Representation of the People Act 1985 s 19(4); and amended by the Electoral Administration Act 2006 ss 20, 74(2), Sch 1 Pt 4 paras 49, 51(1), Sch 2) (cf PARA 344; and **ELECTIONS AND REFERENDUMS** vol

15(3) (2007 Reissue) PARA 237); in relation to individual and corporate insolvency by the Insolvency Act 1986 Pts VIII-XI (ss 252-385) (see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 760); and in relation to acts under the Municipal Corporations Act 1882 (see s 230); the specified days, however, not including bank holidays and days appointed for mourning, but extending to the Monday and Tuesday in Easter week and days appointed for public fast or humiliation. See also *Re Counter's Petition, Buckingham v Counter* [1938] 2 KB 90, [1938] 1 All ER 186, CA.

6 See the Bills of Exchange Act 1882 s 14(1); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1437. See also PARA 328.

7 CPR 2.8(5). The rule (formerly contained in RSC Ord 3 r 4) does not affect the operation of what is now the Limitation Act 1980 (*Morris v Richards* (1881) 45 LT 210; *Gelmini v Moriggia* [1913] 2 KB 549); nor does it apply to acts not affected by the offices being closed (*Re Lambert, ex p Saffery* (1877) 5 ChD 365, CA; *Chambon v Heighway* (1890) 54 JP 520, DC). When the last day for moving the court under rules of court was a Sunday, it was held that notice of motion ought to have been given for the following day: *Taylor v Jones* (1875) 34 LT 131. As to the extent, if any, to which cases decided under RSC or CCR may be cited in relation to CPR see PARA 310 note 1. By virtue of the Insolvency Rules 1986, SI 1986/1925, r 12.9 (substituted by SI 1999/1022) (see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 760; **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 1053), CPR 2.8 and CPR 3.1(2)(a) are applied to anything required or authorised to be done by the Insolvency Rules.

8 See generally **PRISONS**.

9 Criminal Justice Act 1961 s 23(3), (4) (s 23(3) amended by the Criminal Justice Act 1982 s 77, Sch 14 para 10, and the Criminal Justice Act 2003 s 186(4); Criminal Justice Act 1961 s 23(4) amended by the Criminal Justice Act 1988 s 123, Sch 8 para 1, and the Criminal Justice and Public Order Act 1994 s 168(2), Sch 10 para 11). As from a day to be appointed, these provisions will not apply to remand centres: Criminal Justice Act 1961 s 23(4) (amended by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 Pt II para 33). At the date at which this title states the law, no such day had been appointed. In relation to a prisoner to whom an intermittent custody order under the Criminal Justice Act 2003 s 183 relates (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1611 et seq), the only days to which these provisions apply are Christmas Day, Good Friday and any bank holiday: Criminal Justice Act 1961 s 23(3A) (added by the Criminal Justice Act 2003 s 186(4)) (in force for certain purposes).

10 See the Gaslight and Coke and other Gas Companies Acts Amendment Act 1880 s 7 (repealed); *LCC v South Metropolitan Gas Co* [1904] 1 Ch 76, CA, a case on the interpretation of the Act. As a result of that decision the law was subsequently modified by the London Gas Act 1905 ss 5(5), 10 (repealed). As to the testing of gas see now **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 899.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/2. COMPUTATION OF TIME/(4) COMPUTATION OF PERIOD WHEN HOLIDAYS INTERVENE/342. General rule.

## (4) COMPUTATION OF PERIOD WHEN HOLIDAYS INTERVENE

### 342. General rule.

Where a period is fixed within which some act must be done, Sundays and holidays in general count like other days<sup>1</sup>, and it makes no difference that the last day of the period falls on a Sunday<sup>2</sup>.

In a charterparty in which it is stipulated that a thing is to be done in so many days, *prima facie* consecutive days are intended, and holidays or non-working days are not excluded unless there is a port custom or something in the context to show that working days only were to be included<sup>3</sup>.

1 *Wheeler v Green* (1839) 7 Dowl 194; *Pennell v Churchwardens of Uxbridge* (1862) 8 Jur NS 99; *Re Gilbert, ex p Viney* (1877) 4 ChD 794, CA; *Aspinall v Sutton* [1894] 2 QB 349; *Blackwell v Blackwell* (1920) 89 LJP 143 (period limited for complying with decree for restitution of conjugal rights); *Benton v Sanderson Kayser Ltd* [1989] ICR 136, [1989] IRLR 19, CA (four week period prescribed by the Employment Protection (Consolidation) Act 1978 s 84(4) (repealed) (see now the Employment Rights Act 1996 s 138(3)) means four calendar weeks not four working weeks); *Stainer v Secretary of State for the Environment and Shephway District Council* (1992) 65 P

& CR 310, [1994] JPL 44 (Christmas and bank holidays to be included in the calculation of the six week time limit for challenging a decision of the Secretary of State contained in the Town and Country Planning Act 1990 s 288 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 47)). Cf *Niemann v Moss* (1860) 6 Jur NS 775, where by the terms of the charterparty holidays were to be excluded and it was held that nevertheless Sundays were to be included. As to the exceptions to the general rule see PARA 343 et seq.

2 As to when the period expires on a Sunday see PARA 340.

3 See *Nielsen v Wait* (1885) 16 QBD 67, CA; *Alvion Steamship Corpn Panama v Galban Lobo Trading Co SA of Havana* [1955] 1 QB 430, [1955] 1 All ER 457, CA; **CUSTOM AND USAGE** vol 12(1) (Reissue) PARAS 692-693; and **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 288.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/2. COMPUTATION OF TIME/(4) COMPUTATION OF PERIOD WHEN HOLIDAYS INTERVENE/343. Computation under rules of court etc.

### 343. Computation under rules of court etc.

Where any period specified by the Civil Procedure Rules, a practice direction or by any judgment or order of the court for doing any act, being a period of five days or less, includes a Saturday, Sunday or bank holiday<sup>1</sup>, Christmas Day or Good Friday, that day does not count in the computation of time<sup>2</sup>.

1 As to bank holidays see PARA 321.

2 CPR 2.8(4). See *Re Yeoland Consols Ltd* (1888) 58 LT 108 (time for filing affidavit supporting winding-up petition); *Brammall v Mutual Industrial Corpn* (1915) 84 LJ Ch 474 (time prescribed by rules to elapse between service of notice of motion and day named for hearing); *Re Display Multiples Ltd* [1967] 1 All ER 685, [1967] 1 WLR 571 (advertisement of winding up petition); *Tanglecroft Ltd v Hemdale Group Ltd* [1975] 3 All ER 599, [1975] 1 WLR 1544, CA (order that judgment be not drawn up for seven days); *Adan v Brent London Borough Council* (1999) 32 HLR 848, CA (time limit, which expired on day county court office was closed, extended until next day office was open). See also CPR 2.8(5); and PARA 341. By virtue of the Insolvency Rules 1986, SI 1986/1925, r 12.9 (substituted by SI 1999/1022) (see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 760; **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 1053), CPR 2.8 and CPR 3.1(2)(a) are applied to anything required or authorised to be done by the Insolvency Rules. As to the CPR generally, and as to the extent, if any, to which cases decided under RSC or CCR may be cited in relation to CPR, see PARA 310 note 1.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/2. COMPUTATION OF TIME/(4) COMPUTATION OF PERIOD WHEN HOLIDAYS INTERVENE/344. Computation for purposes of elections.

### 344. Computation for purposes of elections.

In computing any period of not more than seven days for the purposes of the legislation relating to election campaigns and legal proceedings concerning elections<sup>1</sup>, Saturday, Sunday, Christmas Eve, Christmas Day, Good Friday, a bank holiday<sup>2</sup> and any day appointed for public thanksgiving or mourning are to be disregarded<sup>3</sup>.

1 Ie for the purposes of the Representation of the People Act 1983 Pt II (ss 67-119) and Pt III (ss 120-186) (see **ELECTIONS AND REFERENDUMS**).

2 'Bank holiday' in relation to any election means a day which is a bank holiday (as provided for by the Banking and Financial Dealings Act 1971 s 1, Sch 1) (see PARA 321) in the part of the United Kingdom in which

the constituency or electoral area is situated: Representation of the People Act 1983 s 119(3) (substituted by the Representation of the People Act 1985 s 19(4)) (see **ELECTIONS AND REFERENDUMS**).

3 Representation of the People Act 1983 s 119(1)(b), (2) (s 119(2) substituted by the Representation of the People Act 1985 s 19(4); and amended by the Electoral Administration Act 2006 ss 20, 74(2), Sch 1 Pt 4 paras 49, 51(1), Sch 2) (see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 237). See also the Representation of the People Act 1983 s 186.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/2. COMPUTATION OF TIME/(5) FRACTIONS OF A DAY/345. The general rule.

## (5) FRACTIONS OF A DAY

### 345. The general rule.

In computing a period of time, at any rate when counted in years or months, no regard is, as a general rule, paid to fractions of a day, in the sense that the period is regarded as complete although it is short to the extent of a fraction of a day<sup>1</sup>. In cases in which the day of the date of an instrument of lease is included in the term it is immaterial that the tenant's enjoyment cannot begin with the beginning of that day<sup>2</sup>. Similarly, in calculating a person's age the day of his birth counts as a whole day. Formerly at common law a person attained a specified age on the day next before the anniversary of his birthday<sup>3</sup>, but in respect of anniversaries falling on a date after 1 January 1970, the time at which a person attains a particular age expressed in years is the commencement of the relevant anniversary of the date of his birth<sup>4</sup>.

In contracts where payment has to be made at a certain rate per day a part of a day counts as a whole day, unless it appears from the context that the contrary was intended<sup>5</sup>. Where it is stipulated that money is to be paid at a given hour, the whole period between that hour and the next hour is intended; the hour is considered as the 24th aliquot part of the day<sup>6</sup>.

1 *Pugh v Duke of Leeds* (1777) 2 Cowp 714 at 720 per Lord Mansfield CJ (cited in *Re Railway Sleepers Supply Co* (1885) 29 ChD 204 at 205); *Lester v Garland* (1808) 15 Ves 248; *Cartwright v MacCormack (Trafalgar Insurance Co Ltd, third party)* [1963] 1 All ER 11, [1963] 1 WLR 18, CA; *Trow v Ind Coope (West Midlands) Ltd* [1967] 2 QB 899, [1967] 2 All ER 900, CA; *Re Figgis, Roberts v McLaren* [1969] 1 Ch 123, [1968] 1 All ER 999. See also *Re Seaford, Seaford v Seifert* [1968] P 53, [1968] 1 All ER 482, CA (cited and applied in *Re Palmer (deceased) (a debtor)* [1994] Ch 316, [1994] 3 All ER 835, CA); *Warr v Warr* [1975] Fam 25, [1975] 1 All ER 85. This paragraph was cited with approval in *R v Crown Court at Middlesex Guildhall, ex p Okoli* [2000] Crim LR 921, DC.

2 *Clayton's Case* (1585) 5 Co Rep 1a; *R v St Mary, Warwick, Inhabitants* (1853) 1 E & B 816, where an occupation which began on 29 September and ceased before midnight on the ensuing 30 September was held, for the purpose of a settlement, to be an occupation for a year. See also *Bedding v McCarthy* (1993) 27 HLR 103, [1994] 2 EGLR 40, CA, (tenancy agreements deal with years, months, weeks and sometimes days, but not with hours). As to the calculation of days making a quarter of a year see PARA 306; and cf **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 219.

3 *Fitzhugh v Dennington* (1704) 2 Ld Raym 1094; *Roe d Wrangham v Hersey* (1771) 3 Wils 274, where a will made on 31 January by a person who was born on 1 February 21 years before was held valid; *Toder v Sansam* (1775) 1 Bro Parl Cas 468, HL; *Grant v Grant* (1840) 4 Y & C Ex 256; *Re Shurey, Savory v Shurey* [1918] 1 Ch 263. A gift to a person on attaining his 25th year means that he is to take the property on his 24th birthday: see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARAS 1-2.

4 Family Law Reform Act 1969 s 9(1). This provision applies only where the relevant anniversary falls on a date after 1 January 1970 and, in relation to any enactment, deed, will or other instrument, has effect subject to any provision in it: s 9(2). Section 9 abrogated the old common law rule stated in *Re Shurey, Savory v Shurey* [1918] 1 Ch 263.

5 *Commercial Steamship Co v Boulton* (1875) LR 10 QB 346, Ex Ch. Cf *Cornfoot v Royal Exchange Assurance Corp* [1904] 1 KB 40, CA; *Yeoman v R* [1904] 2 KB 429, CA, where the intention of the parties as indicated by



the charterparty was that regard should be had to hours. See **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 288; cf **CONTRACT** vol 9(1) (Reissue) PARA 929 et seq; **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARAS 68, 168.

6 *Knox v Simmons* (1793) 4 Bro CC 433; *Anon* (1844) 1 Coll 273; *Bernard v Norton* (1864) 10 LT 183.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/2. COMPUTATION OF TIME/(5) FRACTIONS OF A DAY/346. Priorities.

### 346. Priorities.

The general rule<sup>1</sup> that fractions of a day are to be disregarded does not apply where the object of a statute would be defeated unless the precise hour of an occurrence were noted<sup>2</sup>, or where conflicting claims depend on the question which of two events was first in order of time, for then the particular hour when the events occurred may become material. On the same day rival claimants may have been born, or execution may have been issued and the judgment debtor may have died<sup>3</sup> or committed an act of bankruptcy<sup>4</sup>; in such cases the rights of the parties have to be determined by the ascertainment of the particular moments of the day at which the several events happened<sup>5</sup>. The same principle applies where two writs in the same matter are issued against the same defendant on the same day, for the issuing of an original writ is an act of the party and not a judicial act, and therefore the doctrine according to which it is assumed that a judicial act is dated from the earliest moment of the day on which it is done has no application<sup>6</sup>.

If on one and the same day an award is made and signed and a rule nisi obtained calling upon the arbitrator to show cause why a case for the opinion of the court should not be stated, it becomes necessary to discuss the question which of the two events occurred first, for the court has no jurisdiction to grant the rule nisi if previously the award has been signed<sup>7</sup>.

If on the same day a debt becomes payable and the creditor dies intestate, and there is a doubt which event occurred first it will be presumed that the death took place before the debt should have been paid, so that the Limitation Act 1980<sup>8</sup> will not begin to run until letters of administration are taken out<sup>9</sup>.

Where two or more persons die in circumstances rendering it uncertain which of them survived the other or others, a statutory presumption as to the order in which the deaths occurred arises for purposes affecting the title to property<sup>10</sup>.

1 As to this rule see PARA 345.

2 *Combe v Pitt* (1763) 3 Burr 1423; *Chick v Smith* (1840) 8 Dowl 337; *Campbell v Strangeways* (1877) 3 CPD 105 (moment from which a dog licence begins to run).

3 *Chick v Smith* (1840) 8 Dowl 337 (followed in *Wright v Mills* (1859) 4 H & N 488; and *Campbell v Strangeways* (1877) 3 CPD 105 at 106, where *Combe v Pitt* (1763) 3 Burr 1423 at 1434 per Lord Mansfield CJ was cited). See also *Roe d Wrangham v Hersey* (1771) 3 Wils 274. As to the priority of writs for the purpose of execution see **CIVIL PROCEDURE** vol 12 (2009) PARA 1297.

4 *Ex p D'Obree, ex p le Mesurier* (1803) 8 Ves 82 (followed in *Wydown's Case* (1807) 14 Ves 80; and *Ex p Dufrene* (1812) 1 Ves & B 51); *Franklin v Lord Brownlow* (1808) 14 Ves 550; *Sadler v Leigh* (1815) 4 Camp 195; *Thomas v Desanges* (1819) 2 B & Ald 586; *Godson v Sanctuary* (1832) 4 B & Ald 255; *Re Newton, ex p Bignold* (1836) 3 Mont & A 9; *Pewtress v Annan* (1841) 9 Dowl 828.

5 Similarly, a difference of five minutes in the registration of two deeds relating to the same land in the Middlesex Registry might have determined a question of priorities: see *Re North, ex p Hasluck* [1895] 2 QB 264 at 273, CA, per Rigby J. The Middlesex Register was closed for all purposes from 10 July 1940. See also *Re Seaford, Seaford v Seifert* [1968] P 53, [1968] 1 All ER 482, CA; *Eaglehill Ltd v J Needham Builders Ltd* [1973] AC

992, [1972] 3 All ER 895, HL (notice of dishonour of bill of exchange arriving on same day as bill presented for payment); *Re Palmer (deceased) (a debtor)* [1994] Ch 316, [1994] 3 All ER 835, CA.

6 *Pugh v Robinson* (1786) 1 Term Rep 116; *Clarke v Bradlaugh* (1881) 8 QBD 63, CA; *Warne v Lawrence* (1886) 54 LT 371. As to the presumption applicable to judicial acts see PARA 347.

7 *Tabernacle Permanent Building Society v Knight* [1892] AC 298, HL.

8 See the Limitation Act 1980 ss 2, 5; and **LIMITATION PERIODS** vol 68 (2008) PARA 952 et seq.

9 *Atkinson v Bradford Third Equitable Benefit Building Society* (1890) 25 QBD 377, CA. Cf **LIMITATION PERIODS** vol 68 (2008) PARA 923.

10 See **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARAS 146-147.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/2. COMPUTATION OF TIME/(6) SPECIAL RULES AFFECTING EXECUTIVE AND JUDICIAL ACTS/347. The Crown and judicial acts.

## **(6) SPECIAL RULES AFFECTING EXECUTIVE AND JUDICIAL ACTS**

### **347. The Crown and judicial acts.**

An exceptional rule prevails in regard to acts done on behalf of the Crown and judicial acts. When the title of the Crown and of a subject accrue on the same day, the title of the Crown prevails<sup>1</sup>. In the case of judicial acts, it is a general, but perhaps not a universal, rule that the act is taken to date from the earliest moment of the day on which it is done<sup>2</sup>. The fact, therefore, that at some earlier hour on the same day something has been done or has happened which if it had been done or had happened on the previous day would have nullified the act is immaterial<sup>3</sup>.

1 *R v Giles* (1820) 8 Price 293 at 334, referring to *R v Crump and Hanbury* (1670), cited in Park at 126.

2 *Clarke v Bradlaugh* (1881) 8 QBD 63 at 66, CA, where Lord Coleridge CJ refused to recognise the rule as universal, referring to *Pie v Coke* (1616) Hob 128. See also *Re Warren, ex p Wheeler v Trustee in Bankruptcy* [1938] Ch 725, [1938] 2 All ER 331, DC (priority of judicial act over earlier non-judicial act on same day); *Re Seaford, Seaford v Seifert* [1968] P 53, [1968] 1 All ER 482, CA (spouse dying before decree absolute purported to be made; doctrine of relation back not applicable); *Re Palmer (deceased) (a debtor)* [1994] Ch 316, [1994] 3 All ER 835, CA (rule could not operate to cause a statutory instrument modifying primary legislation to be applied so as to make an insolvency administration order take effect during the lifetime of the deceased person). As to the precise moment at which statutes, statutory instruments and byelaws come into operation see **STATUTES** vol 44(1) (Reissue) PARA 1278 et seq.

3 *Lord Porchester v Petrie* (1783) 3 Doug KB 261; *Edwards v R* (1854) 9 Exch 628.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/2. COMPUTATION OF TIME/(6) SPECIAL RULES AFFECTING EXECUTIVE AND JUDICIAL ACTS/348. Date of judgment or order.

### **348. Date of judgment or order.**

A judgment or order of the court must bear the date on which it is given or made<sup>1</sup>, and it takes effect from the day when it is given or made, or such later date as the court may specify<sup>2</sup>.

1 CPR 40.2(2)(a). See also **CIVIL PROCEDURE** vol 12 (2009) PARA 1137. As to the CPR see PARA 310 note 1.

2 CPR 40.7(1). However, as to a judgment on failure to acknowledge service entered against a state see CPR 40.10; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1142. At common law a judgment related back to the first day of the term, and it was said that the priority of one of two judgments signed on the same day could not be averred: *Lord Porchester v Petrie* (1783) 3 Doug KB 261; *Pugh v Robinson* (1786) 1 Term Rep 116. As to the extent, if any, to which cases decided under RSC or CCR may be cited in relation to CPR see PARA 310 note 1.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/2. COMPUTATION OF TIME/(7) CONSTRUCTION OF EXPRESSIONS LIMITING TIME/349. A reasonable time.

## **(7) CONSTRUCTION OF EXPRESSIONS LIMITING TIME**

### **349. A reasonable time.**

Where anything is limited to be done within a 'reasonable time' or at a 'reasonable hour', the question what is a reasonable time or reasonable hour must necessarily depend on the circumstances, and is therefore a question of fact<sup>1</sup>. If a contract is silent as to time for performance of an act, the law implies that it is to be done within a reasonable time, and what period is reasonable is a question of fact<sup>2</sup>.

1 *Pitt v Shew* (1821) 4 B & Ald 208, where a reasonable time was allowed to a landlord to appraise and sell distrained goods; *Burton v Griffiths* (1843) 11 M & W 817; *Charnock v Liverpool Corp* [1968] 3 All ER 473, [1968] 1 WLR 1498, CA (reasonable time for repair of car). As respects contracts for the sale of goods it has been expressly enacted that the question of what is a reasonable time or a reasonable hour is a question of fact: see the Sale of Goods Act 1979 ss 29(5), 59; and **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARAS 120, 168. As to what constitutes a reasonable time in reference to particular transactions see **CARRIAGE AND CARRIERS** vol 7 (2008) PARAS 542 et seq, 666 et seq; **CONTRACT** vol 9(1) (Reissue) PARA 929 et seq; **DISTRESS** vol 13 (2007 Reissue) PARA 1146; **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1460; **INSURANCE** vol 25 (2003 Reissue) PARA 309. See also *Bescot (Electric) Ltd v Merlin Mouldings Ltd* (1952) 69 RPC 297, where an undertaking not to do something 'in future' was construed as an undertaking for a limited time; and **COMPETITION** vol 18 (2009) PARA 403.

2 *Hick v Raymond and Reid* [1893] AC 22, HL. The length requisite for reasonable notice may, however, involve questions partly of fact and partly of law: see *Tindal v Brown* (1786) 1 Term Rep 167 at 168 per Lord Mansfield CJ, and at 169 per Ashurst J.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/2. COMPUTATION OF TIME/(7) CONSTRUCTION OF EXPRESSIONS LIMITING TIME/350. Meaning of 'good reason' for extending the period within which an application for judicial review must be made.

### **350. Meaning of 'good reason' for extending the period within which an application for judicial review must be made.**

A claim form for judicial review must be filed promptly and in any event not later than three months after the grounds to make the claim first arose<sup>1</sup>. The court can extend or abridge time but will only exercise this power where it is satisfied there are very good reasons for doing so<sup>2</sup>. The time may not be extended by agreement between the parties<sup>3</sup>. The following have been held<sup>4</sup> to be 'good reason' for extending time: time taken by a local planning authority to obtain counsel's opinion about whether to bring proceedings for failure to comply with an enforcement notice<sup>5</sup>; time taken to obtain legal aid<sup>6</sup>; the pursuit of alternative remedies<sup>7</sup>; the importance of the point of law at issue<sup>8</sup>; and other reasons based on 'public policy'<sup>9</sup>. The following have been held not to be 'good reason' for extending time: delay on the part of the applicant's non-legal

professional adviser<sup>10</sup>; time spent corresponding with the court about alternative remedies<sup>11</sup>; and time taken pursuing political redress<sup>12</sup>.

1 CPR 54.5(1). See also *Practice Direction--Judicial Review* PD 54 paras 5.6, 5.7. As to judicial review generally see **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq.

2 See Administrative Court Notes for Guidance on Applying for Judicial Review para 10.

3 CPR 54.5(2).

4 As to the extent, if any, to which cases decided under RSC or CCR may be cited in relation to CPR see PARA 310 note 1.

5 *R v Chichester Justices, ex p Chichester District Council* (1990) 60 P & CR 342.

6 *R v Stratford-on-Avon District Council, ex p Jackson* [1985] 3 All ER 769, [1985] 1 WLR 1319, CA.

7 *R v Rochdale Metropolitan Borough Council, ex p Cromer Ring Mill Ltd* [1982] 3 All ER 761.

8 *R v Secretary of State for the Home Office, ex p Ruddock* [1987] 2 All ER 518, [1987] 1 WLR 1482; *R v Isle of Wight County Council, ex p O'Keefe* (1989) 59 P & CR 286; *R v Ministry of Agriculture, Fisheries and Food, ex p Dairy Trade Federation Ltd* [1995] COD 3.

9 *R v Secretary of State for Transport, ex p Presvac Engineering Ltd* [1992] 4 Admin LR 121.

10 *R v Tavistock General Comr, ex p Worth* [1985] STC 564, 59 TC 116.

11 *R v Lincoln Crown Court, ex p Jones* [1990] COD 15.

12 *R v London Borough of Bexley, ex p Barnehurst Golf Club Ltd* [1992] COD 382 (organising a lobby of Parliament).

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/2. COMPUTATION OF TIME/(7) CONSTRUCTION OF EXPRESSIONS LIMITING TIME/351. Meaning of 'undue delay'.

### 351. Meaning of 'undue delay'.

The High Court may refuse to grant leave to apply for judicial review, or refuse any leave sought on the application, if it considers that there has been undue delay in making the application, and if it considers that the granting of the relief sought would be likely to cause substantial hardship to any person, or substantially prejudice the rights of any person, or be detrimental to good administration<sup>1</sup>.

Whenever an application for judicial review is not made promptly and in any event within three months from the date when grounds for the application first arose there is 'undue delay'<sup>2</sup>. When considering whether an application is made promptly, the court will take into account all the facts and circumstances including whether the applicant received prior warning of the decision complained of<sup>3</sup>, and the length of time between the taking of the decision and its communication to the applicant<sup>4</sup>. Time starts running when the grounds for application objectively first arose, whether or not that was known to the applicant<sup>5</sup>. In the case of an application for a quashing order in respect of any judgment, order, conviction or other proceeding, the date when grounds for the application first arose will be taken to be the date of that judgment, order, conviction or proceedings<sup>6</sup>. It is not clear whether time runs from the making or the coming into force of subordinate legislation<sup>7</sup>. Time runs from the time when a public duty was first owed<sup>8</sup>.

- 1 See the Senior Courts Act 1981 s 31(6); and **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 164. The Senior Courts Act 1981 was previously known as the Supreme Court Act 1981 and was renamed by the Constitutional Reform Act 2005 s 59(5), Sch 11 Pt 1 as from 1 October 2009: see the Constitutional Reform Act 2005 (Commencement No 11) Order 2009, SI 2009/1604; and **COURTS**.
- 2 *R v Stratford-on-Avon District Council, ex p Jackson* [1985] 3 All ER 769, [1985] 1 WLR 1319, CA; *R v Dairy Produce Quota Tribunal for England and Wales, ex p Caswell* [1990] 2 AC 738, [1990] 2 All ER 434, HL.
- 3 *R v Secretary of State for Transport, ex p Presvac Engineering Ltd* (1992) 4 Admin LR 121.
- 4 *R v Redbridge Justices, ex p Gurmit Ram* [1992] QB 384, [1992] 1 All ER 652.
- 5 *R v Secretary of State for Foreign Affairs, ex p World Development Movement* [1995] 1 All ER 611, [1995] 1 WLR 386. See also *R v Secretary of State for Trade and Industry, ex p Greenpeace Ltd* [1998] Env LR 415, [1998] COD 59 (grounds of the application might arise earlier than the decision impugned where there was an earlier act or decision that could have been challenged).
- 6 See *Practice Direction--Judicial Review* PD 54 para 4.1.
- 7 Cf *R v HM Treasury, ex p Smedley* [1985] QB 657, [1985] 1 All ER 589, CA; and *R v HM Customs and Excise Comr, ex p Eurotunnel plc* [1995] COD 291, (1995) Independent, 23 February.
- 8 *R v Herefordshire County Council, ex p Cheung* (1986) Times, 4 April.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/2. COMPUTATION OF TIME/(7) CONSTRUCTION OF EXPRESSIONS LIMITING TIME/352. Meanings of 'immediately' and 'forthwith'.

### 352. Meanings of 'immediately' and 'forthwith'.

There appears to be no material difference between the terms 'immediately'<sup>1</sup> and 'forthwith'<sup>2</sup>. A provision to the effect that a thing must be done 'forthwith' or 'immediately' means that it must be done as soon as possible<sup>3</sup> in the circumstances, the nature of the act to be done being taken into account<sup>4</sup>.

1 For cases where immediate payment of money has been held to mean payment within a reasonable time after demand see *Brighty v Norton* (1862) 3 B & S 305; *Toms v Wilson* (1863) 4 B & S 442, Ex Ch; *Re Burghardt, ex p Trevor* (1875) 1 ChD 297; *Moore v Shelley* (1883) 8 App Cas 285, PC; *Bank of Baroda v Panessar* [1987] Ch 335, [1986] 3 All ER 751 (applying *Brighty v Norton* (1862) 3 B & S 305). In *Pybus v Mitford* (1672) 2 Lev 75 at 77, it was said that, although 'immediately' in strictness excludes all mean time, yet to make good the deeds and intents of the parties it should be construed to mean such convenient time as is requisite for doing the thing. See *Burgess v Boetefeur* (1844) 7 Man & G 481.

2 *R v Worcester Justices* (1839) 7 Dowl 789; *Hancock v Somes* (1859) 1 E & E 795; *Roberts v Brett* (1865) 20 CBNS 148, HL; *Re Sullivan, ex p Sullivan* (1866) 36 LJ Bcy 1; *Re Sillence, ex p Sillence* (1877) 7 ChD 238; *R v Berkshire Justices* (1879) 4 QBD 469 at 471; *Re Southam, ex p Lamb* (1881) 19 ChD 169, CA; *Keith, Prowse & Co v National Telephone Co* [1894] 2 Ch 147. See also *Ex p Lowe* (1846) 3 Dow & L 737; *R v Aston* (1850) 19 LJMC 236. In *Thompson v Gibson* (1841) 8 M & W 281 and *Grace v Clinch* (1843) 4 QB 606, the same expression was used; cf *Roberts v Brett* (1865) 11 HL Cas 337. In *Costar v Hetherington* (1859) 1 E & E 802, the direction that justices on dismissing a complaint should forthwith give a certificate was held to mean forthwith on demand, and not forthwith on the dismissal. For cases of contract see *Simpson v Henderson* (1829) Mood & M 300 (contract to take cargo on board a vessel forthwith); *Doe d Pittman v Sutton* (1841) 9 C & P 706 (covenant to put premises in repair forthwith); *Staunton v Wood* (1851) 16 QB 638, where on a contract for the delivery of goods forthwith and for payment in 14 days it was held that delivery should be made within 14 days; *Roberts v Brett* (1865) 11 HL Cas 337. In *Hillingdon London Borough v Cutler* [1968] 1 QB 124, [1967] 2 All ER 361, CA, a demolition order was required to be made 'forthwith', and it was held that it could be made 'at any reasonable time thereafter'. In *R v Secretary of State for Social Services, ex p Child Poverty Action Group* [1990] 2 QB 540, [1989] 1 All ER 1047, CA, it was held that 'forthwith' in the Social Security Act 1975 s 98(1) (repealed) meant 'as soon as reasonably possible'.

3 'As soon as possible' in a manufacturing contract means within a reasonable time, regard being had to the manufacturer's ability to produce the goods and the orders he already has in hand: *Attwood v Emery* (1856) 1 CBNS 110. See also **CONTRACT** vol 9(1) (Reissue) PARA 930. As to the time for delivery of goods see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARAS 168-169, 301. For the purposes of what is now the Prison Rules 1999, SI 1999/728, r 53(1) (disciplinary charges to be laid against prisoners 'as soon as possible'), it was held that the circumstances of the particular case are to be taken into account, and that the authorities are allowed time to carry out a preliminary investigation: *R v Board of Visitors of Dartmoor Prison, ex p Smith* [1987] QB 106, [1986] 2 All ER 651, CA. See also **PRISONS** vol 36(2) (Reissue) PARA 598. As to the meaning of 'instantly' see *R v Brownlow* (1839) 11 Ad & El 119 at 127, where the word was held to mean not at the time, but instantly after. As to the meanings of 'with all possible dispatch', 'with all reasonable speed' and 'immediately' in connection with charterparty cases see **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 244 et seq.

4 *R v Price, ex p Heard* (1854) 8 Moo PCC 203; *Re Southam, ex p Lamb* (1881) 19 ChD 169 at 173, CA (citing *Hyde v Watts* (1843) 12 M & W 254, where the effecting of an insurance was the act to be done); *Re Lyon, ex p Lyon* (1882) 45 LT 768; *Re Darbyshire, ex p Hill* (1883) 53 LJ Ch 247; *Lowe v Fox* (1885) 15 QBD 667, CA (affd (1887) 12 App Cas 206, HL); *Re Muscovitch, ex p Muscovitch, Bankrupts v Official Receiver* [1938] 4 All ER 570 (affd [1939] Ch 694, [1939] 1 All ER 135, CA); *Sameen v Abeyewickrema* [1963] AC 597, [1963] 3 All ER 382, PC.

Halsbury's Laws of England/TIME (VOLUME 97 (2010) 5TH EDITION)/2. COMPUTATION OF TIME/(7) CONSTRUCTION OF EXPRESSIONS LIMITING TIME/353. Meanings of 'directly', 'peremptory' and 'on' or 'upon'.

### 353. Meanings of 'directly', 'peremptory' and 'on' or 'upon'.

'Directly' means speedily, or at least as soon as practicable<sup>1</sup>.

'Peremptory' is often used in regard to judicial proceedings, as, for instance, a peremptory plea as distinguished from a plea in abatement, and a peremptory order. A peremptory order is an order by which a person is required to do something within a fixed time or suffer the consequences<sup>2</sup>.

'On' or 'upon' may mean simultaneously with the act to which it relates or within a reasonable time after it, according to the circumstances<sup>3</sup>.

1 *Duncan v Topham* (1849) 8 CB 225; *Minister of Agriculture v Kelly* [1953] NI 151. 'Directly' cannot mean 'within a reasonable time': *Duncan v Topham* (1849) 8 CB 225. Cf **CONTRACT** vol 9(1) (Reissue) PARA 930.

2 *Beazley v Bailey* (1846) 16 M & W 58. The fact that an order is peremptory does not prevent alteration of it on special circumstances being shown: *Falck v Axthelm* (1889) 24 QBD 174, CA.

3 *R v Arkwright* (1848) 12 QB 960; *Robertson v Robertson and Favagrossa* (1883) 8 PD 94, CA, per Jessel MR; *Scott v Scott* [1921] P 107, CA. See also *Mackinnon v Peate* [1936] 2 All ER 240, DC, where 'registered on or after' was construed to mean registered for the first time on or after; *Dagger v Shepherd* [1946] KB 215, [1946] 1 All ER 133, CA, where a notice to quit 'on or before' was not invalid for uncertainty; *A-G's Reference (No 2 of 1994)* [1995] 2 All ER 1000, [1994] 1 WLR 1579 (meaning of 'on taking the sample' and meaning of 'there and then' in the Water Act 1989 s 148(1)(b) (repealed)).

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### 354. Within so many days.

The requirement that a notice is to be given within so many days of a certain day does not mean that it must be given at least so many days before that day<sup>1</sup>, nor is a notice which is required to be given on a certain day invalid because it is given before that day<sup>2</sup>.

1 *Elliott v Popular Playhouse Ltd* (1909) Times, 1 April, where it was held that a notice required to be given 'within seven days prior to' a certain day is not required to be given at least seven days before that day. See also *Stewart v Chapman* [1951] 2 KB 792, [1951] 2 All ER 613, DC, cited in PARA 336 note 3; and *Rightside Properties Ltd v Gray* [1975] Ch 72, [1974] 2 All ER 1169.

2 *Elliott v Popular Playhouse Ltd* (1909) Times, 1 April.